

LAW OFFICE OF

S. W. ATENCIO & ASSOCIATES, P.C.

601 THIRD STREET ALAMOSA, COLORADO 81101

Telephone: (719) 589.6005

FAX: (719) 589.5748

E-Mail: atenciolaw@amigo.net

227979

October 11, 2010

E-Filing

Ms. Cynthia T. Brown
Chief Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, CL 20423-0001

ENTERED
Office of Proceedings

OCT 13 2010

Part of
Public Record

Re: Finance Docket No. 35380, San Luis & Rio Grande Railroad Petition for a Declaratory Order

Dear Ms. Brown,

On behalf of the Board of County Commissioners of Conejos County, Colorado, I am e-filing its Public Comment in Opposition in the above captions proceeding. This Public Comment in Opposition is due October 12, 2010.

Please contact me if you have any questions.

Sincerely,



Stéphane Walter Atencio

Enclosure

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35380

Re: San Luis & Rio Grande Railroad Petition For a Declaratory Order

**PUBLIC COMMENT IN OPPOSITION TO PETITION, ON BEHALF OF THE BOARD
OF COUNTY COMMISSIONERS OF CONEJOS COUNTY COLORADO**

Submitted by:
Stéphane Walter Atencio, 13129
Conejos County Attorney
S. W. Atencio & Assoc., P.C.
601 Third Street
Alamosa, CO 81101
(719) 589-6005
atenciolaw@amigo.net

Dated: October 12, 2010

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35380

Re: San Luis & Rio Grande Railroad Petition For a Declaratory Order

PUBLIC COMMENT IN OPPOSITION TO PETITION, ON BEHALF OF THE BOARD OF COUNTY COMMISSIONERS OF CONEJOS COUNTY COLORADO

I. INTRODUCTION

This Public Comment is presented on behalf of the Board of County Commissioners of Conejos County, Colorado (hereinafter Conejos County). Conejos County has consistently taken the position that the San Luis & Rio Grande Railroad (hereinafter SLRG) is subject to compliance with the lawfully enacted Conejos County Land Use Code (hereinafter CCLUC) and has failed to do so. Conejos County has never taken the position that the activities proposed to be conducted by SLRG at its transload facility are prohibited by either State law or the Conejos County Land Use Code. Conejos County respectfully requests that this Board determine that the activities of SLRG at the Antonito, Colorado, transload facility are subject to the Clean Railroad Act (hereinafter CRA) and that the regulation of such activities by Conejos County, pursuant to application of the CCLUC, is not preempted by the ICC Termination Act (hereinafter ICCTA).

II. FACTUAL BACKGROUND

As admitted by SLRG, in the Spring of 2009 SLRG and EnergySolutions (hereinafter ES) sought to develop a solid waste transload facility in Antonito, Colorado. This solid waste transload facility is perched above and located approximately 300 feet from the San Antonio River, a tributary of the Rio Grande. See, Exhibit C-1, Affidavit of Land Use Administrator. The SLRG solid waste transload facility is located within an "Industrial" Zoning District of Conejos County but this property has not been permitted by Conejos County to be used as a solid waste transfer facility. Id.

In it's Opening Statement SLRG attempts to minimize the potential hazard of the "commodity" being handled at the transload facility by characterizing same as either "dirt" or "contaminated dirt." In fact, this matter involves solid waste generated by the Los Alamos National Laboratory (hereinafter LANL), which "left a legacy of radioactive and hazardous waste contamination." SLRG Exhibit 2. In addition to "contaminated dirt," SLRG is handling solid waste at the transload facility which includes "debris such

as soil, wood, concrete, asphalt, and metal," all of which contains either "radioactive material and/or chemicals called polychlorinated biphenyls (PCBs)." *Id.* Thus, this matter involves not just "dirt" but, rather, solid waste comprised of radioactive and hazardous dirt and debris.

Without providing notice to any Conejos County official, and prior to obtaining the required Highway Access Permit from the Colorado Department of Highways, ES commenced shipments of solid radioactive and hazardous waste to the Antonito solid waste transload facility, SLRG's contractor began transferring the solid radioactive and hazardous waste to ES's gondola cars, and SLRG began transporting the loaded gondola cars through Conejos County and the entire State of Colorado. Upon discovering this activity, Conejos County officials immediately demanded cessation of these activities, demanded compliance with the CCLUC, and requested proof of compliance with applicable state laws and regulations. SLRG and ES agreed to cease these activities, primarily because SLRG had failed to obtain a required state highway access permit. It is important to note that at this time SLRG did not own the property upon which the transload facility was located. See, Exhibit C-2 (SLRG Press Release dated May 5, 2010, whereby it "announced today that it has purchased land south of Antonito and obtained an access permit from Colorado Department of Transportation, enabling the railroad to resume their transload operations."); Exhibit C-2 (SLRG vesting deed dated March 3, 2010.)

SLRG alleges that "County officials further informed both SLRG and ES officials that obtaining such permits would require public hearings and could take an indefinite amount of time." While it is true that the process for obtaining the necessary Land Use Permits involves public hearings, there is no truth to the allegation that either "County officials" informed SLRG and ES officials that this could take an indefinite amount of time or that, in fact, the permitting process takes an indefinite amount of time. First, SLRG fails to even identify the "County officials" who allegedly made this statement and fails to provide any sworn statement in support of this allegation. Second, SLRG fails to even allege that any such "County official" represented having the authority to make any such statement. Third, if SLRG had in fact applied for the required Land Use Permits, this permitting process could have been completed in less than 90 days. See, Exhibits C-4, C-5. Finally, it should be noted that if SLRG had applied for the required Land Use Permits in the Spring of 2009, it would not have been subject to the moratorium, which was enacted on November 24, 2009. See, Exhibit C-1, Affidavit of Land Use Administrator.

SLRG also makes several blatant misrepresentations regarding the discussions of the parties. It is true that, during the time SLRG was both securing ownership of the property where the transload facility is located and obtaining the required State Highway Access Permit, Conejos County engaged in discussions with both SLRG, ES, the Los Alamos National Laboratories (hereinafter LANL), and the Department of Energy (hereinafter DOE). However, SLRG erroneously alleges that the parties "arrived at what SLRG, ES, and several County officials thought was the basis for a mutually

acceptable settlement agreement." In fact, there was no settlement agreement executed by any party to this matter and it is inappropriate to even discuss the settlement negotiations of the parties in any legal forum. Most egregiously, SLRG alleges that the Conejos County Commissioners "declined to approve the proposed settlement and against the advice of the County Attorney directed him to go to local court to seek an injunction." Any advice provided to the Conejos County Commissioners was provided by the County Attorney in executive session, no representative of either SLRG or ES was in attendance at these executive sessions, no County official has revealed to either SLRG or ES the advice provided to the County Commissioners, and Conejos County has not waived any attorney-client privilege.

Conejos County did, in fact, voluntarily dismiss its federal court proceeding against SLRG, primarily because the County, SLRG, ES, LANL, DOE, and local citizens accepted the invitation of Congressman Salazar to form a "Task Force" for the purpose of which was to discuss the possibility of settlement of this matter. Additionally, both SLRG and ES had agreed to terminate shipments to the Antonito transload facility indefinitely. See, SLRG Exhibit 3 correspondence dated July 9, 2010 ("In recognition of the concerns of both Conejos County and your office, we understand that EnergySolutions voluntarily suspended the practice of loading DOE waste containers onto rail cars in Conejos County pending the conclusion of further discussions on this matter.") Contrary to SLRG's implication, the County was under no obligation to provide SLRG of notice of such dismissal. See, Rule 41, Federal Court Rules of Civil Procedure.

Following the unsuccessful efforts of the Task Force formed by Congressman Salazar, ES filed an Application for Land Use Permit on September 9, 2010, on behalf of SLRG. See, Exhibit C-1, Affidavit of Land Use Administrator. This Application was the subject of Public Hearings before the Conejos County Planning Commission on September 29, 2010, and is scheduled for Public Hearing before the Conejos County Commissioners on November 4, 2010. See, Exhibit C-1, Affidavit of Land Use Administrator. Thus, if the County Commissioners render a decision at the Public Hearing, the Application will have been processed in less than 60 days; if the County Commissioners exercise their right to render a decision within 30 days of the Public Hearing, the Application will have been processed in less than 90 days.

Of course, if the above-described Application is granted, this matter is moot.

III. THE CLEAN RAILROADS ACT APPLIES TO SLRG's TRANSLOAD FACILITY

A. THE CLEAN RAILROADS ACT

The Clean Railroads Act amended portions of 49 U.S.C. 10501 and expressly removed the Board's jurisdiction over solid waste rail transfer facilities. Thus, 49 U.S.C. 10501(c)(2)(B) provides that the Board does not have jurisdiction over "a solid waste rail

transfer facility as defined in section 10908 of this title, except as provided under sections 10908 and 10909 of this title." As stated by this Board in its Decision Ex Parte No. 684, Docket Number EP-684:

The purpose of the Clean Railroads Act is to establish that solid waste rail transfer facilities, as defined in section 10908(e)(1)(H), must now comply with all applicable federal and state requirements respecting pollution prevention and abatement, environmental protection and restoration, and protection of public health and safety, including laws governing solid waste, to the same extent as any similar solid waste management facility. The CRA gives the Board the power, if petitioned, to determine the placement of solid waste rail transfer facilities that are part of the national rail system through the issuance of land-use-exemption permits, which preempt state and local laws and regulations "affecting the siting" of such facilities. See 49 U.S.C. 10909(f). The CRA focuses on the Board's jurisdiction and regulatory authority with regard to the siting of solid waste rail transfer facilities.

* * *

More specifically, section 602 of the Clean Railroads Act amends 49 U.S.C. 10501(c)(2)(B) to remove the Board's jurisdiction over solid waste rail transfer facilities, except for the authority to preempt state and local laws and regulations through the issuance of land-use-exemption permits as set forth in sections 603-604 of that act, which are codified at 49 U.S.C. 10980-09. **The Clean Railroads Act leaves all other regulation of solid waste rail transfer facilities to the states.**

* * *

The Clean Railroads Act also adds section 10910, "Effect on other statutes and authorities," **which preserves the state's traditional police powers to require railroads to comply with environmental, public health, and public safety regulations so long as the regulations are not unreasonably burdensome to interstate commerce and do not discriminate against rail carriers.**

(Emphasis added.)

49 U.S.C. 10908(e)(1)(H) provides:

The term "solid waste rail transfer facility" -

(i) means the portion of a facility owned or operated by or on behalf of a rail carrier . . . where solid waste, as a commodity to be transported for a charge, is collected, stored, separated, processed, treated, managed, disposed of, or transferred, when the activity takes place outside of the original shipping containers; but

(ii) does not include -

(i) the portion of the facility to the extent that activities taking place at such portion are comprised solely of the railroad

transportation of solid waste after the solid waste is loaded for shipment on or in a rail car, including railroad transportation for the purpose of interchanging railroad cars containing solid waste shipments; or
(II) a facility where solid waste is solely transferred or transloaded from a tank truck directly to a rail tank car.

This statute is poorly worded and fails to provide definitions of key terms. Interpretation of this statute is complicated by the fact that the definition of a "solid waste transfer facility" is defined in terms of both locations and activities. Thus, this statute defines a solid waste transfer facility as "that portion" of a rail carrier facility where the solid waste commodity is collected, stored, managed or transferred and when "the activity" takes place outside of the original shipping containers.

It would be reasonable to assume that the legislature intended to apply the terms "collected, stored, separated, processed, treated, managed, disposed of, or transferred" to both the "location" where these activities occur as well as to define the "activity" which is subject to regulation under the CRA. Therefore, it is reasonable to interpret this statute to mean that state and local laws apply to both the "location" where solid waste is "collected, stored, separated, processed, treated, managed, disposed of, or transferred" as well as the activity of a railroad when solid waste is "collected, stored, separated, processed, treated, managed, disposed of, or transferred." To conclude otherwise would cause absurd results: there could be a "portion" of a railroad facility admittedly subject to state and local regulation, but once the solid waste was placed in an "original shipping container" then the "portion" of the railroad facility where the shipping containers are transferred to rail cars would not be subject to state and local regulation. One cannot reasonably conclude that the legislature intended such an absurd result.

In summary, with regard to the regulation of the "location" of these activities, this statute expressly excludes those portions of the facility where the solid waste is merely being transported after being loaded on or in a rail car or where the solid waste is solely transferred or transloaded from a tank truck directly to a rail car. Thus, this statute exempts from state or local regulation those "portions" of a facility where certain activities are conducted. With regard to the regulation of "activities" described in this statute, the only exemption provided is "when the activity takes place outside of the original shipping containers."

In light of the fact that SLRG has not argued that portions of the Antonito transload facility are not subject to the Clean Railroads Act, the primary issue to be resolved by the Board is the application of the Clean Railroads Act to the "activities" of SLRG. More specifically, the Board must determine what the legislature intended to allow under the exception defined as: "when the activity takes place outside of the original shipping containers." Unfortunately, the statute does not define "original shipping container." However, the legislative history does provide some guidance.

Senator Lautenberg introduced the bill to amend 49 U.S.C. 10501 by stating:

Mr. President, I rise today to re-introduce legislation that will close an **egregious loophole** in federal law. Currently, this loophole permits solid waste management facilities operated near railroads to go unregulated - - free from meeting any minimum level of safety, health, and environmental standards. **Basically, this loophole prevents state or local law from regulating the operation of these facilities on property owned or controlled by railroads.**

* * *

These unregulated facilities present an imminent threat to public health and the environment.

* * *

Let me be clear that my concern is not the transport of solid waste by rail. Railroads provide a vital role in commerce in the United States and the benefits of rail transportation are numerous Further, the transportation of waste via rail is not at issue here, and I am not opposed to the operation of solid waste management facilities on property owned or controlled by railroads.

My chief concern is the lawful management of solid waste facilities. If a solid waste management facility is to be operated on rail property, it must be regulated like any other such facility. This is not happening today.

The threats posed by unregulated waste management facilities operating on property owned or controlled by railroads are so great that a broad and diverse coalition of public and private sector entities have been formed to oppose these **rogue operations.**

* * *

Responsible management of solid waste requires safeguards to protect public health and the environment.

(Emphasis added).

As noted by SLRG, the Senate Report regarding the Clean Railroads Act provides:

A solid waste rail transfer facility would only include the portion of a facility owned or operated by or on behalf of a railroad carrier where solid waste, as a commodity to be transported in commerce, is collected, stored, separated, processed, treated, managed, disposed of, or transferred outside of the original **sealed shipping containers.** (Emphasis added). It would not include a facility to the extent that activities taking place at such

a facility were comprised of the railroad transportation of a solid waste after the solid waste is placed on or in a railroad car, including transportation for the purpose of interchanging railroad cars containing sealed solid waste shipments.

(Emphasis added). Thus, it is clear that the intent of the legislature in enacting the Clean Railroads Act was to "close the loophole" which afforded the protection of federal preemption to "rogue operations" whose unregulated activities have created an "imminent threat" to public health and the environment. The legislative intent was to continue to provide federal preemption with regard to transportation of a solid waste "after" the solid waste is placed on or in a railroad car, including transportation for the purpose of interchanging railroad cars containing sealed solid waste shipments. The only other exemption was the exemption of railroad activity involving the movement of "sealed" containers.

In this matter, the Board must keep in mind that the activity for which SLRG seeks the protection of federal preemption is the transportation of not only solid waste, but "radioactive and hazardous waste." More importantly, this solid radioactive and hazardous waste is being transported in plastic bags and no evidence has been produced to support a conclusion that use of these plastic bags is regulated by any state or federal agency. Mr. Rogers, on behalf of the shipper Energy Solutions, states in his Sworn Statement (SLRG Exhibit 1) that Energy Solutions provides these plastic bags to LANL and that these containers "are designed, constructed, tested, and used to comply with U.S. Department of Transportation (DOT) requirements for shipping radioactive waste in accordance with 49 CFR 173." Thus, while ES offers the "intention" to comply with DOT requirements, neither SLRG nor ES allege that these plastic bags have, in fact, been determined to be in compliance with DOT requirements. This failure to prove certification of compliance with DOT requirements is of particular concern because ES admits that the solid radioactive and hazardous waste includes debris "that could puncture the IP-1 soft-sided containers." SLRG Exhibit 2. It should also be noted that the solid radioactive and hazardous waste will also be transported in metal freight containers (intermodals). No evidence has been presented that these intermodals are even designed to be in compliance with DOT requirements and, more importantly, no evidence has been presented that the intermodals have, in fact, been determined to be in compliance with these DOT requirements.

Although the key exemption to the Clean Railroads Act is premised upon proof of activity involving the movement of sealed original shipping containers, SLRG has failed to even allege that the intermodals are in fact "sealed" before transportation. In fact, SLRG Exhibit 2 reveals that the intermodals have a "removable steel lid" and the plastic bags can be opened at any time. SLRG Exhibit 1. Additionally, it is important to consider the fact that ES has admitted that the plastic bags and intermodals will be subject to invasion by "free liquid accumulation." See, SLRG Exhibit 2. To address this concern, SLRG and/or ES proposes to use "kitty litter", as stated by the DOE in SLRG Exhibit 2:

Prior to loading IP-1s, the PIC makes the determination to place absorbent material (kitty litter, quick-sorb, etc), as needed, to address potential condensation, precipitation, or potential free liquid accumulation concerns.

One must conclude that unsealed containers which are subject to free liquid accumulation do not meet the definition of original sealed shipping containers as envisioned by the legislature in enacting the Clean Railroads Act.

Of significant concern to Conejos County, is the fact that ES will not be the only shipper of solid waste to the Antonito solid waste transfer facility and ES may not be the only shipper of solid radioactive and hazardous waste to the Antonito solid waste transfer facility. SLRG "offers transloading services bundled as part of its rail transportation services" (presumably) at this facility. See, SLRG Exhibit 4, Verified Statement of M. Abbey. DOE representatives have advised Conejos County that the LANL clean-up will be conducted in several "campaigns" and each such campaign will be subcontracted out and, not necessarily to ES. See, Exhibit C-1, Affidavit of Land Use Administrator. In fact, ES has advised Conejos County that ES may not be the subcontractor responsible for the future "campaigns." *Id.* SLRG does not allege that all customers of its offered transloading services will be subject to any requirements regarding the characteristics of the shipping containers which will be accepted at the Antonio transload facility. Neither SLRG nor ES alleges that either ES or any other DOE subcontractor will be subject to any requirements regarding the characteristics of the shipping containers which will be accepted at the Antonio transload facility. In fact, neither SLRG nor ES alleges that ES will, in future campaigns, utilize the shipping containers which have been utilized to date. Therefore, this Board must consider these issues in light of the fact that the manner by which ES has packaged the solid radioactive and hazardous waste will, in all probability, not be the manner utilized by either the various customers of the railroad or the subcontractors of DOE and, of greater concern, SLRG has not imposed any requirements whatsoever regarding the characteristics of the shipping containers which its customers will be delivering to the Antonio transloading facility and accepted by SLRG as an "original shipping container."

Examining this issue in a broader context, the Board must consider the fact that acceptance of SLRG's argument defeats the legislative intent in enacting the Clean Railroads Act. Clearly, the primary purpose in enacting the Clean Railroads Act was to address an imminent threat to public health and the environment by closing the loophole in federal law that allowed rogue operations to operate solid waste facilities without regulation. (In fact, even though the Clean Railroads Act allows railroads to obtain a land-use-exemption from the Board, a railroad must still comply with applicable state and local laws.) Here, SLRG is urging this Board to accept SLRG's own definition of an "original shipping container," without providing any evidence that these containers are in compliance with any applicable regulations regarding the safety of these containers. Here, SLRG is urging the Board to allow SLRG, in the future, to accept solid waste from its customers in the total and complete absence of any regulation regarding

the shipping containers which will be accepted at the Antonito transload facility. Acceptance of SLRG's position would completely breach the closure of the prior loophole intended in enacting the Clean Railroads Act by allowing railroads to self-define "original shipping container" and completely avoid regulation. In effect, acceptance of SLRG's argument would allow any railroad to accept delivery of solid radioactive and hazardous waste in a Hefty trash bag or a cardboard box, and, thereby, avoid regulation of a solid waste facility located on railroad property.

The presumption against preemption is well established in the law. "Consideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law. Building & Construction Trades Council v. Associated Builders & Contractors, 507 U.S. 218, 224 (1993). "Reliance on the presumption against pre-emption [sic] limits 'congressional intrusion into the State's traditional prerogatives and general authority to regulate for the health and welfare of their citizens.'" Florida East Coast Railway v. City of West Palm Beach, 266 F.3d 1324 (11th Cir. 2001), citing City of Boerne v. Flores, 521 U.S. 507, 534 (1997). There is also a presumption that the "historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." Altria Group, Inc. v. Good, 129 S. Ct. 538, at 543, (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1947)).

It is clear that the legislative intent in enacting the Clean Railroads Act was to impose regulation of the transportation of solid waste. It is also well established that state or local regulation of activities affecting health, safety, and the environment is not preempted. "The Supreme Court has long recognized the authority of local governments to establish guidelines for the use of property through such zoning ordinances." *Id.* Here, we are dealing with solid waste that is both radioactive and hazardous. The handling and transportation of this kind of solid waste has the potential for significantly affecting the health, safety, and environment of Conejos County and its citizens. In the absence of legislative clarification of the term "original shipping container," and in consideration of the presumption of preemption, this Board must conclude that Congress intended that state and local governments define the term and regulate the use of "original shipping container" used in the transportation of solid waste by railroads. In the absence of existing federal laws or regulations governing the design, manufacture, and use of an "original shipping container" the logical conclusion is that Congress intended that a state or local authority retains the authority to define and regulate the use of an "original shipping container" used in the transportation of solid waste by a railroad. To allow any and every shipping container to be self-characterized as an "original shipping container" by a railroad, or its various customers, would violate the express purpose of the Clean Railroads Act.

B. SLRG's CHARACTERIZATION OF THE SOLID WASTE IS WITHOUT MERIT

SLRG also argues that the solid radioactive and hazardous waste which is being handled at the Antonito transload facility does not meet the definition of waste products

subject to the Clean Railroads Act. This argument is without basis and must fail.

49 U.S.C. 10908(e)(1)(G) defines "solid waste" as including:

- (i) construction and demolition debris;
- (v) institutional waste;
- (vii) industrial waste; and
- (viii) other solid waste, as determined appropriate by the Board.

Subsection 10908(e)(1)(B) provides:

The term "construction and demolition debris" means waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

Subsection 10908(e)(1)(D) provides, in pertinent part, as follows:

The term "industrial waste" means the solid waste generated by manufacturing and industrial and research and development processes and operations, **including contaminated soil**

(Emphasis added). Subsection 10908(e)(1)(B) provides:

The term "institutional waste" means material discarded by schools, nonmedical waste discarded by hospitals, material discarded by nonmanufacturing activities at prisons and government facilities, and materials discarded by other similar establishments or facilities.

SLRG alleges that the solid radioactive and hazardous waste at issue is not construction or demolition debris, but SLRG fails to make an argument in support of this allegation and fails to cite to any facts. Contrary to SLRG's allegation, the solid waste at issue is in fact construction or demolition debris. Conejos County has been informed repeatedly and by several different DOE and LANL representatives that the shipments contain debris generated by the demolition of old buildings at LANL. See, Exhibit C-1, Affidavit of Land Use Administrator.

SLRG also argues that the solid radioactive and hazardous waste at issue is neither industrial nor institutional waste because "it is LLRW produced by the Los Alamos National Laboratory as part of their site restoration requirements." Thus, it appears that SLRG is arguing that the characterization of waste is determined by the requirements imposed upon the waste's removal, rather than how the waste was generated. Of course, SLRG cites no law or regulation in support of this argument. SLRG's argument in this regard is specious at best.

Rather, the solid radioactive and hazardous waste at issue is and should be characterized as both industrial and institutional waste. First, the waste was generated at LANL, a research, development, and manufacturing facility founded as part of the Manhattan Project. Second, the waste being transported includes contaminated soil. Third, LANL is clearly a governmental facility, previously operated by DOE and currently operated under contract with DOE. Finally, the waste contains materials that were discarded by the operators of this government facility. See, SLRG Exhibit 3, wherein DOE Deputy Administrator Cook describes the Department of Energy's "commitment to clean-up the contamination from past national security activities at LANL."

In summary, SLRG fails to present a rational argument in support of its allegations that the solid radioactive and hazardous waste at issue is not subject to the Clean Railroads Act. In fact, the solid radioactive and hazardous waste at issue is "construction and demolition debris," "industrial waste," and "institutional waste" as defined in the Clean Railroads Act.

C. SECTION 49 U.S.C. 10909 IS FURTHER EVIDENCE THAT SLRG IS REQUIRED TO APPLY FOR THE REQUIRED CONEJOS COUNTY LAND USE PERMITS

As noted by this Board, 49 U.S.C. 10909 provides this Board with the authority to preempt state and local laws and regulations through the issuance of land-use exemption permits. Thus, if the Board finds that "a State, local or municipal law, regulation, order, or other requirement affecting the siting" of a solid waste rail transfer facility "unreasonably burdens" or "discriminates against" the interstate transportation of solid waste and a solid waste rail transfer facility, then the Board may issue a land-use exemption permit.

We believe that this clause contemplates a separate route for solid waste rail transfer facilities to come before the Board. It provides an opportunity to a facility that has first applied to the appropriate state agency for those state permits affecting the siting of a facility and that has received an unsatisfactory result to apply to the Board for a land-use-exemption permit. After receiving an unsatisfactory result from the state, a solid waste rail transfer facility could apply to the Board for a land-use-exemption permit. It must, however, make at least one of two showings with regard to the state's action or the state law: (1) the state has placed an unreasonable burden on railroad transportation of solid waste, or (2) a state law discriminates against the railroad transportation of solid waste and a solid waste rail transfer facility.

* * *

We believe one of the purposes of section 10909(a)(1) is to provide a facility with an opportunity to seek a land-use-exemption permit after receiving an unsatisfactory result from the state if the facility believes that the state is unreasonably burdening the interstate transportation of solid waste by a railroad or is discriminating against the railroad transportation

of solid waste and a solid waste rail transfer facility.

Regardless of whether a proposed facility comes before the Board or not, we note that, in order to lawfully operate, a proposed solid waste rail transfer facility will need to comply with all state laws, as described in section 10908(a), that do not affect the siting of a facility.

Docket Number EP-684 (emphasis added).

In this matter, SLRG has not even alleged that application of the CCLUC constitutes an unreasonable burden on railroad transportation of solid waste, or that the CCLUC discriminates against the railroad transportation of solid waste and a solid waste rail transfer facility. The only factual allegation that may impliedly support any such argument by SLRG is clearly erroneous: the process to obtain the required County Land Use Permits does not take an indefinite period of time. Additionally, there is no basis to even argue that application of the CCLUC in any way discriminates against railroad activities.

Upon review of the foregoing, it is clear that this Board has determined that Section 10909 contemplates that SLRG must, at a minimum, comply with the application requirements of the CCLUC and, if their Application is denied, they may seek relief from this Board in the form of a land-use exemption. As noted above, if the Application filed by ES is granted, this matter is moot. More importantly, if the Application filed by ES is not granted, Section 10909 affords a remedy for SLRG, upon making the requisite showings. However, even if SLRG obtains a land-use exemption permit from the Board, it must comply with applicable state and local laws.

IV. CONEJOS COUNTY'S APPLICATION OF ITS LAND USE CODE TO SLRG'S TRANSLOAD FACILITY IS NOT PREEMPTED BY THE ICCTA

A. CONEJOS COUNTY'S LAND USE REGULATIONS ARE NOT PREEMPTED

As this Board has repeatedly recognized, not all state and local regulations are preempted by the ICCTA.

It therefore appears that states and towns may exercise traditional police powers over the development of railroad property, at least to the extent that the regulations protect public health and safety, are settled and defined, can be obeyed with reasonable certainty, entail no extended or open-ended delays, and can be approved (or rejected) without the exercise of discretion on subjective questions. Electrical, plumbing and fire codes, direct environmental regulations enacted for the protection of

the public health and safety, and other generally applicable, non-discriminatory regulations and permit requirements would seem to withstand preemption. Cf. Village of Ridgefield Park v. New York, Susquehanna & W. R. Corp., 163 N. N. 446, 750 A.2d 57, 64 (2000) (noting the Transportation Board's position that: (1) "while state and local government entities . . . retain certain police powers and may apply non-discriminatory regulation to protect public health and safety, their actions must not have the effect of foreclosing or restricting the railroad's ability to conduct its operation or otherwise unreasonably burdening interstate commerce"; and (2) "railroads are exempt from the traditional permitting process but not . . . from most other generally applicable laws").

Green Mountain R.R. Corp. v. Vermont, 404 F.3d 638 (2d Cir. 2005).

In New York Susquehanna v. Jackson, 500 F.3d 238 (3d Cir. 2007), the United States Court of Appeals for the Third Circuit held that "the Termination Act does not preempt state regulation if it is nondiscriminatory and not unreasonably burdensome." Id., at 257.

We believe that the approach of the Board and the Second Circuit Court is sound. In particular, we agree that a state law that affects rail carriage survives preemption if it does not discriminate against rail carriage and does not unreasonably burden rail carriage. The nondiscriminatory prong is particularly useful in determining whether a state is regulating principally to discriminate against a specific industry. Much of the Board's logic in finding that standard building, fire, and electrical codes are not preempted is that, while the costs of compliance may be high in some sense, they are "incidental" when they are subordinate outlays that all firms build into the cost of doing business. See *Riverdale*, 1999 WL 715272, at 6. Thus, for a state regulation to pass muster, it must address state concerns generally, without targeting the railroad industry.

As for the unreasonably burdensome prong, the most obvious component is that the substance of the regulation must not be so draconian that it prevents the railroad from carrying out its business in a sensible fashion. In addition, as the *Green Mountain* Court held, regulations must be settled and definite enough to avoid openended [sic] delays. [citation omitted]. The animating idea is that, while states may set health, safety, and environmental ground rules, those rules must be clear enough that the rail carrier can follow them and that the state cannot easily use them as a pretext for interfering with or curtailing rail service.

* * *

We do not hold that local regulations may not give state and local officials any discretion at all, for that would be impractical. Standard building, electrical, and fire codes no doubt give local officials some discretion.

[citations omitted]. But such regulations may not (1) be so open-ended as to all but ensure delay and disagreement, or (2) actually be used unreasonably to delay or interfere with rail carriage. In other words, some regulations, like those at issue in the *Green Mountain* litigation, give too much discretion to survive a facial challenge because they invite delay. In addition, even a regulation that is definite on its face may be challenged as-applied if unreasonably enforced or used as a pretext to carry out a policy of delay or interference.

Id., at 244-245.

B. ALL LEGAL REQUIREMENTS HAVE BEEN MET IN SUPPORT OF A FINDING THAT THE CONEJOS COUNTY LAND USE CODE IS NOT PREEMPTED

The CCLUC is a zoning resolution lawfully adopted pursuant to Section 30-28-101, et seq., C.R.S. See, Exhibit C-6. Section 30-28-124(1), C.R.S., provides, in pertinent part, that it is unlawful to erect or construct any building or structure in violation of a zoning code and that it is unlawful to use any building, structure, or land in violation of a zoning code.

Article 5, Division 5.1, Section 5.100, of the CCLUC provides that a Land Use Permit is required for any change in use of land (unless such use is expressly exempt from this requirement). See, Exhibit C-5. Said Section 5.100 also provides that no development or activity associated with a land use change may occur prior to issuance of a Land Use Permit. Id. SLRG engaged in activities which constitute a change in use of the subject property without obtaining a Land Use Permit. More specifically, SLRG changed the use of the property to one which is properly characterized as a "Solid Waste Transfer Facility" pursuant to the CCLUC. See, Exhibit C-1, Affidavit of Land Use Administrator; Exhibit C-7, CCLUC Section 2.100. Pursuant to the CCLUC, use of land as a Solid Waste Transfer Facility is neither a permitted nor an "exempt" use in an Industrial Zone and such use may occur only after applying for a Special Use Review and obtaining a Land Use Permit. See, Exhibit C-1, Affidavit of Land Use Administrator.

Article 5, Division 5.1, Section 5.100, of the CCLUC provides that a Construction Permit is required for all new construction (unless expressly exempted) and no construction activities may commence prior to the issuance of a Construction Permit. See, Exhibit C-5. SLRG installed, placed, or constructed a building and other structures on the property prior to obtaining a Construction Permit. See, Exhibit C-1, Affidavit of Land Use Administrator. SLRG's building and other structures are neither permitted nor exempt pursuant to the Land Use Code. Id.

Article 5, Section 5.500, of the CCLUC states that all structures shall conform to the water and wastewater requirements of Article 13 of the CCLUC. See, Exhibit C-8 (Article 13 of the CCLUC).

Pursuant to CCLUC Section 5.410, at the conclusion of the Public Hearing before the County Commissioners, the County Commissioners "shall approve, approve with conditions, or deny the application for a Land Use Permit to conduct a Special Use." Pursuant to CCLUC Section 3.240 the County Commissioners may continue the Public Hearing to a fixed date and the time only if "acceptable to the applicant."

C. THE CONEJOS COUNTY LAND USE CODE REQUIREMENT TO OBTAIN A LAND USE CONSTRUCTION PERMIT IS NOT PREEMPTED

Division 5.6 of the CCLUC addresses Land Use Construction Permits. A construction permit is required for all new construction unless expressly exempted. See, CCLUC Section 5.600. The application submission and review procedures are defined in CCLUC Section 5.640. The application requirements are simple and straightforward, and review of the submitted application by the Land Use Administrator must occur within 5 days. The standards for approval of the submitted application are defined in CCLUC Section 5.660. There are only 4 requirements to be met for approval of a Construction Permit.

As noted above, the law is well settled that local government application of building codes is not preempted. In this matter, the requirements to be met for issuance of a Land Use Construction Permit are considerably less than those which would be required to comply with a building code. In light of the foregoing, there is no basis to conclude that Conejos County's requirement that SLRG obtain a Land Use Construction Permit is preempted by the ICCTA.

D. THE CONEJOS COUNTY LAND USE CODE REQUIREMENT TO OBTAIN A SPECIAL USE REVIEW PERMIT IS NOT PREEMPTED

The CCLUC was promulgated to "provide for the protection of the health, safety and welfare of the residents of the County and to protect and preserve the environment, the history and the traditions of Conejos County." Exhibit C-9, CCLUC Section 1.110. The CCLUC was promulgated in 2005. Exhibit C-6.

The provisions of the CCLUC which apply to SLRG's transload facility are settled and defined. The application and review procedures are defined in Divisions 3.2 and 5.4 of the CCLUC. The standards for approval of applications are defined in Division 5.5 of the CCLUC. Water and wastewater requirements are defined in Article 13 of the CCLUC.

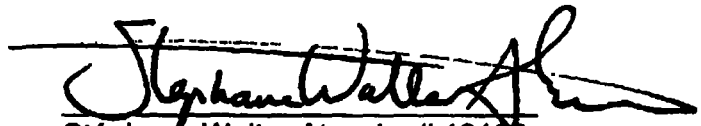
As noted above, well established law provides that not all state and local regulations are preempted by the ICCTA. The facts of this matter amply support this Board's conclusion that the Conejos County Land Use Code is not preempted by the ICCTA.

First, the CCLUC was promulgated to protect health and safety. Second, the CCLUC is settled and well defined. Third, the CCLUC can be obeyed with reasonable certainty. Fourth, compliance with the CCLUC does not entail extended or open-ended delays. Fifth, the CCLUC applies to all property within the unincorporated areas of Conejos County and is, therefore, not discriminatory. In fact, there is nothing specific to railroads in the CCLUC. Sixth, the requirements for obtaining the required land use permits are not burdensome. Finally, an application for a Land Use Permit or a Construction Permit can be approved without the exercise of discretion, by either the Land Use Administrator or the County Commissioners, which ensures delay and disagreement or in a manner that can be actually used unreasonably to delay or interfere with rail carriage. See, Rule 106, Colorado Rules of Civil Procedure, and Opinions decided thereunder.

V. CONCLUSION

SLRG has failed to meet its burden of proving that the Clean Railroads Act does not apply to the Antonito transload facility. Additionally, Conejos County's application of its Land Use Code to SLRG's transload facility is not preempted by the ICCTA. Accordingly, this Board must declare that SLRG must comply with the Conejos County Land Use Code and, in particular, all applicable requirements for obtaining a Land Use Special Use Review Permit and a Land Use Construction Permit.

Respectfully submitted,



Stéphane Walter Atencio, # 13129
Conejos County Attorney
S. W. Atencio & Assoc., P.C.
601 Third Street
Alamosa, CO 81101
(719) 589-6005
atenciolaw@amigo.net

Dated: October 12, 2010



San Luis & Rio Grande Railroad

118 S. Clinton St.

Suite 400

Chicago, IL 60661

For Immediate Release

Antonito, Colorado – May 5, 2010 -- San Luis and Rio Grande Railroad announced today that it has purchased land south of Antonito and obtained an access permit from Colorado DOT, enabling the railroad to resume their transload operations.. Representatives of the railroad met with representatives of Conejos County to inform them that the transload operations are being restarted.

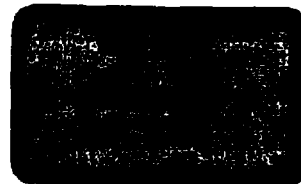
Railroads are regulated by the Federal Surface Transportation Board and transload facilities such as the one south of Antonito operate under the Federal certificate. "Even though a Land Use Permit is not required to resume transloading operations, we have agreed that we will operate under this Federal authorization until Conejos County issues a Permit," said Ed Ellis, President of the railroad.

"We are pleased to be able to operate this facility for transloading of sealed containers onto railcars that would otherwise be trucked. In addition to providing more job opportunities to the local community, we are saving the taxpayers money through the use of lower-cost, and safer rail transportation. The revenue from this move is essential in this recession for us to continue maintaining our track, which is in compliance with all safety regulations," continued Ellis.

The railroad also discussed with the County the need for an educational effort in the schools about safety around railroads. San Luis and Rio Grande participates in the national Operation Lifesaver programs which focuses on teaching motorists and pedestrians about the need to watch for trains and stay off the tracks.

The railroad is continuing efforts to develop an industrial park near the state line south of Antonito to handle bulk agricultural and mineral products. One potential user would develop a lumber mill to produce dimensional lumber and excelsior, creating 20 to 40 jobs in Conejos County. The railroad is working with the County, the State, and Congressman Salazar's office on potential funding sources.

##



AFFIDAVIT

STATE OF COLORADO

)

) ss.

COUNTY OF CONEJOS

)



AFFIDAVIT OF LINDA DEHERRERA

I, Linda DeHerrera, being duly sworn and under oath, state that the following statements are true and correct to the best of my knowledge, information and belief:

1. I am the Conejos County Land Use Administrator and I have served in this position during the pendency of this matter.

2. The SLRG solid waste transload facility is located on land perched above and approximately 300 feet from the San Antonio River. The SLRG solid waste transload facility is located within an "Industrial" Zoning District of Conejos County, but this property has not been permitted by Conejos County to be used as a solid waste transfer facility.

3. Conejos County enacted a Moratorium regarding the issuance of Land Use Permits (except Land Use Permits for home construction) on November 24, 2009. This Moratorium expired on May 24, 2010.

4. If SLRG had filed an Application for Special Use Review and/or an Application for a Construction Permit prior to November 24, 2009, I would have processed any such Application during the pendency of the above-described Moratorium. Any and all Land Use Permit applications filed prior to the enactment of the Moratorium were processed by my office during the Moratorium.

5. EnergySolutions, on behalf of SLRG, filed an Application for Land Use Special Review on September 9, 2010. The Public Hearing before the Conejos County Planning Commission was held on September 29, 2010. The Public Hearing before the Conejos County Board of County Commissioners is scheduled to occur on November 4, 2010.

6. Representatives of Los Alamos National Laboratory and EnergySolutions informed me, repeatedly, that the solid radioactive and hazardous waste being shipped to the Antonito solid waste transfer facility contain debris resulting from the demolition of buildings and facilities which were located at LANL. I toured the LANL facility, observed the landfills, which are the source of the solid radioactive and hazardous waste being shipped to the Antonito solid waste transfer facility, and personally observed the existence of debris resulting from the demolition of buildings and facilities which were located at LANL.

7. DOE representatives have advised me, and the County Commissioners, that the LANL clean-up project will be conducted in several "campaigns" and each such campaign will be subcontracted out and, not necessarily to ES. DOE representatives have advised me, and the County Commissioners, that ES may not be the subcontractor for the next, or future, campaigns.

8. SLRG engaged in activities which constitute a change in use of the subject property without obtaining a Land Use Permit. More specifically, SLRG changed the use of the property to one which is properly characterized as a "Solid Waste Transfer Facility" pursuant to the CCLUC. Pursuant to the CCLUC, use of land as a Solid Waste Transfer Facility is neither a permitted nor an "exempt" use in an Industrial Zone and such use may occur only after applying for a Special Use Review and obtaining a Land Use Permit.

9. SLRG installed, placed, or constructed a building and other structures on the property prior to obtaining a Construction Permit. SLRG's building and other structures are neither permitted nor exempt pursuant to the Land Use Code.

Signed: Linda S. DeHerrera Dated: Oct. 12, 2010
Linda DeHerrera

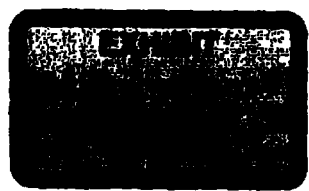
The foregoing was acknowledged before me this 12th day of October, 2010.

My Commission expires 2-8-11

Witness my hand and official seal:

Bart Sowards
Notary Public

BART SOWARDS
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires: 2-8-11



WARRANTY DEED

THIS DEED, dated March 1, 2010, between Quinlan Group, Inc. Grantor, and San Luis & Rio Grande Railroad, Inc., Grantee

WITNESS, that the Grantor, for and in consideration of the sum of Thirty Two Thousand Five Hundred Dollars (\$32,500), the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto the Grantee, the Grantee's heirs and assigns forever its 50% undivided interest in the real property, together with improvements, if any, situate, lying and being in the County of Conejos, State of Colorado, described as follows:

19.37 acres of land as described in the legal description attached hereto as Exhibit A

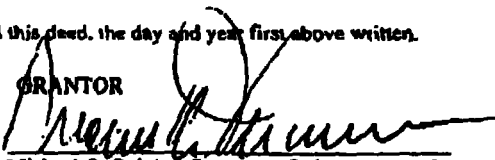
This property is also known by street number 4864 State Highway 285, Antonito, CO 81120

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the Grantee, Grantee's heirs and assigns forever. The Grantor, for itself and its successors, does covenant, grant, bargain and agree to and with the Grantee, Grantee's heirs and assigns, that at the time of the unsealing and delivery of these presents, it is well seized of the premises above conveyed, has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and authority to grant, bargain sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, assessments, encumbrances and restrictions of whatever land or nature whatsoever, except easements and reservations of record. The Grantor shall and will WARRANT AND FOREVER DEFEND the above bargained premises in the quiet and peaceable possession of the Grantee, Grantee's heirs and assigns, against all and ever person or persons lawfully claiming the whole or any part thereof. The singular number shall include the plural, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the Grantor has executed this deed, the day and year first above written.

GRANTOR


Michael C. Quinlan, President, Quinlan Group, Inc.

STATE OF COLORADO
COUNTY OF JEFFERSON

The foregoing instrument was acknowledged before me this 2 day
of March, 2010, by Michael C. Quinlan, President, Quinlan Group, Inc.

Witness my hand and official seal

My commission expires: 4/30/2010


Sandra L. Knight
Notary Public

EXHIBIT "A"

THE WEST HALF (W1/2) OF THE NORTHEAST QUARTER (NE1/4) OF SECTION THIRTY-TWO (32) IN TOWNSHIP THIRTY-THREE (33) NORTH, RANGE NINE (9) EAST OF THE NEW MEXICO MERIDIAN, CONTAINING 80 ACRES, MORE OR LESS, TOGETHER WITH ALL IMPROVEMENTS THEREON, WITH ALL ITS APPURTENANCES.

LESS THAT PARCEL OF LAND DEEDED TO GREAT LAKES CARBON CORPORATION BY MERCEDES SARGENT MIDDLEMIST AND DORA SARGENT QUINLAN DESCRIBED AS FOLLOWS: ALL THAT PART OF THE W1/2 NE1/4 OF SECTION 32, IN TOWNSHIP 33 NORTH, RANGE 9 EAST OF THE NEW MEXICO MERIDIAN, MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: BEGIN AT THE SW CORNER OF SAID W1/2 NE1/4 AND RUN THENCE NORTH ALONG THE WEST LINE OF SAID W1/2 A DISTANCE OF 2066 FEET TO A POINT; RUN THENCE EAST TO THE EAST LINE OF SAID W1/2; RUN THENCE SOUTH ALONG THE EASTLINE OF SAID W1/2 TO THE SE CORNER OF SAID W1/2; RUN THENCE WEST ALONG THE SOUTH LINE OF SAID W1/2 TO THE SW CORNER OF SAID W1/2, BEING THE PLACE OF BEGINNING, CONTAINING 62.60 ACRES, MORE OR LESS.

(END OF PROPERTY LESSED OUT)

ALSO, ALL THAT PART OF THE W1/2 NE1/4 OF SECTION 32, IN TOWNSHIP 33 NORTH, RANGE 9 EAST OF THE NEW MEXICO PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE TRACT HEREIN DESCRIBED, A POINT ON THE NORTH-SOUTH CENTER LINE OF SECTION 32, T. 33 N., R. 9 E., N.M.P.M. WHENCE THE NORTH QUARTER CORNER OF SAID SECTION 32 BEARS N. 0° 02' 1/2" W., 600.36 FT. DISTANT; THENCE EAST, 1070.5 FT. TO A POINT IN THE CENTER OF THE D. & R. G. W. R. R. TRACK, THE NORTHEAST CORNER OF THE TRACT HEREIN DESCRIBED; THENCE S. 0° 26' 1/2" E., 78.0 FT. ALONG THE CENTER OF SAID RAILROAD TRACK TO THE SOUTHEAST CORNER OF THE TRACT HEREIN DESCRIBED; THENCE WEST, 1071.0 FT. TO A POINT ON THE NORTH-SOUTH CENTERLINE OF SAID SECTION 32, THE SOUTHWEST CORNER OF THE TRACT HEREIN DESCRIBED; THENCE N. 0° 02' 1/2" W., 78.0 FT. ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 32 TO THE PLACE OF BEGINNING. THE ABOVE DESCRIBED TRACT CONTAINS 1.917 ACRES, MORE OR LESS, AND IS LOCATED IN THE NE 1/4 OF SECTION 32, T. 33 N., R. 9 E., N.M.P.M., CONEJOS COUNTY, COLORADO.



E. Removal from Office. Any member of the Board of Adjustment may be removed for cause (misconduct or nonperformance of duty) by the Board of County Commissioners.

F. Vacancy. Whenever a vacancy occurs on the Board of Adjustment, the member's position shall remain vacant until a new member can be appointed by the Board of County Commissioners. Openings will be announced through an advertisement in a local paper of general circulation in the county, allowing interested individuals to submit their names for consideration by the Board.

G. Compensation. The members of the Board of Adjustment shall serve without compensation, but may be reimbursed for such travel, mileage and continuing education expenses as may be authorized by the Board of County Commissioners.

Section 3.130 Land Use Office

A. Land Use Administrator Duties and Responsibilities

The Land Use Administrator, or his/her designated representative, is responsible for the administration and/or enforcement of all ordinances and regulations, requirements and provisions of this Code. In order to carry out these responsibilities the Land Use Administrator processes all Land Use Permit and Zone Change applications and is responsible for the review and approval of Land Use Permit applications subject to the Administrative Review process under Division 5.3. The Administrator also fulfills the roles of Secretary to the Planning Commission, the Board of Adjustment, and the Board of County Commissioners when acting upon land use issues.

B. County Inspector/ Code Enforcer Duties and Responsibilities

The County Inspector/Code Enforcer works under the direction of the Land Use Administrator to carry out the requirements and provisions of this code in regard to new construction and septic installation and the enforcement of all ordinances and regulations.

DIVISION 3.2 GENERAL APPLICATION AND REVIEW PROCEDURES

Section 3.200 Pre-application Conference

A. Pre-application Conference Required. Unless expressly provided otherwise in this Code, a pre-application conference is required for all applicants for all requested actions under this Code.

1. **Participating Parties.** The pre-application conference shall be held between the applicant and the Land Use Administrator.
2. **Purpose.** This meeting is intended to provide an understanding of the applicable review procedures, requirements and standards, and to exchange information pertinent to the site and the proposal. The Land Use Administrator will explain the application procedures and the materials required for submittal.
3. **Materials.** The applicant shall bring a conceptual site plan to the pre-application conference showing in sufficient detail the location, parcel size, and basic concept of the proposed land use.

B. Optional Report. Within five (5) working days after the pre-application conference, the Administrator may, at his/her discretion, prepare and mail to the applicant a written report regarding any concerns or conflicts raised by the applicant's proposal.

C. Determination of Level of Review. The Land Use Administrator will determine the appropriate type of review process for the land use change that is being sought.

Section 3.210 Application Submittal

A. Application. The following basic materials are required for *all* applications. For certain types of Land Use applications there are additional application submittal requirements and procedures. The Land Use Administrator will determine the number of copies of the materials that will be required.

1. **Application Form.** Land Use applications shall be obtained from the Land Use Office. Completed application forms and accompanying materials shall be submitted to the Land Use Office by the owner or their authorized agent
 - a. **Applicant is not the owner.** If the applicant is not the owner of the land, or is a contract purchaser of the land, the applicant shall submit a letter signed by the owner consenting to the submission of the application.
 - b. **Applicant is not the sole owner.** If the applicant is not the sole owner of the land, the applicant shall submit a letter signed by the other owners or an association representing the owners consenting to or joining in the application for development permit
2. **Legal Description.** A complete legal description of the property, including the total size of the parcel.
3. **Certification of Taxes Paid.** As verified by the County Treasurer.
4. **Vicinity Map.** An 8 1/2 x 11 copy of an aerial photo, provided by the Land Use Office, locating the section in the County in which the parcel is located. The boundaries of the subject property shall be indicated on the photo. (Not required for Land Use Permits for new construction)
5. **Site Plan.** A sketch site plan, which best conveys the conceptual aspects of the plan and for effective public presentation. The site plan must have the following elements:
 - a. The name, address and telephone number of the property owner or the applicant if not the owner and the name of proposed development or use.
 - b. Date of preparation, and north arrow.
 - c. Clearly identified boundary lines, with approximate dimensions of the subject property.

- d. Location of all structures and uses, existing and proposed, with approximate distance of structures from lot lines.
 - e. Existing and proposed access roads, parking areas, driveways, and/or sidewalks with approximate locations-including all proposed grading for the property.
 - f. Existing and proposed roads, railroad tracks, irrigation ditches, utility lines, and/or easements and rights-of-ways on or adjacent to the parcel, shown by approximate location.
 - g. Significant on-site features that may exist on the property such as: natural and artificial drainage ways, wetland areas, ditches, hydrologic features (with flooding limits based on information available through the County), geologic features and hazards (including slopes, alluvial fans, areas of subsidence, rock outcrops rockfall areas, and landslide areas), dams, reservoirs, excavations, and mines, and any other on-site and off-site features that affect the development.
 - h. Description of the proposed wastewater treatment system, including location and size of leach field, sewer service lines, and treatment facilities to serve the proposed use, if applicable. Refer to Article 13.
 - i. Description of the source and capacity of the water supply, including location and size of well(s) and/or water lines to serve the proposed use, if applicable. Refer to Article 13
 - j. Verification that the site is a legal building lot under this Code and that legal access from a public road has been obtained.
 - k. Current zoning of the property and zoning of adjacent properties.
 - l. Additional information that may be requested by the Land Use Administrator.
6. **Fees.** Any Land Use application must be accompanied by the appropriate fees. A schedule of fees as adopted by the Board of County Commissioners is available through the Land Use Office.

B. Surveyed Plat. In the event that a surveyed plat is required the following basic standards must be met in addition to any other requirements for a specific application.

- 1. **Plat Requirements.** A surveyed plat shall be prepared by a registered or licensed professional land surveyor, in a clear and legible manner on reproducible film stock and in a manner acceptable to the Land Use Administrator. Plats shall exhibit outer dimensions of twenty-four (24) inches by thirty-six (36) inches and shall contain a certification as to accuracy by a registered land surveyor licensed by the State of Colorado. In the case of large subdivisions requiring more than one sheet at such size, a reproducible composite measuring not more than twenty-four (24) inches by thirty-six (36) inches and showing the total area at an appropriate scale shall also be submitted. Photo



Mylar shall be used for the original and two additional paper copies will be required. The plat shall be done at a scale of 1 inch equals 100 feet or 1 inch equals 200 feet or another scale approved by the Administrator which clearly shows the entire proposal.

The plat shall contain the following information:

- a. The name and address of the owner(s) of record of the land being platted as well as signature(s).
- b. The name, address and seal of a Colorado Registered Surveyor certifying the accuracy of the plat, along with a statement by the land surveyor that the survey was performed by him/her or under his/her direct supervision
- c. Title description or title block
- d. The date of preparation of the plat.
- e. A complete and accurate legal description of the property being platted, together with complete reference to the Book and Page of Records with the County.
- f. A scale drawing of the boundaries.
- g. Recorded/apparent rights-of-way and easements
- h. All dimensions necessary to establish boundaries in the field
- i. A description of the monuments, both found and set marking the boundaries and the control monuments.
- j. A statement of the scale of the drawing and a bar or graphical scale.
- k. A North arrow.
- l. Conflicting boundary evidence (for a division of land this must be resolved).
- m. A legend which adequately describes all symbols and line types.
- n. Names of all streets and roads along with dimensions.
- o. Labels showing any adjacent subdivisions.
- p. Monuments which meet minimum state standards.
- q. Monument records shall be filed on all aliquot corners.
- r. The acreage and/or square footage of lots being platted.



- s. A vicinity map adequate to clearly depict the general location.

Section 3.220 Review of Application by Land Use Administrator

The Land Use Administrator shall review all Land Use Applications as follows:

A. Completeness Determination. Within fifteen (15) working days of receipt of the application, the Land Use Administrator shall determine whether the application is complete in regard to the submittal requirements for the specific application. The Land Use Administrator shall also assess whether or not an application for a zone change should also be submitted by the applicant for the proposed use.

1. **Application is not Complete.** If the application is not complete, the Land Use Administrator shall inform the applicant of the deficiencies in writing and shall take no further action on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies within sixty (60) calendar days, the Land Use Administrator shall notify the applicant in writing that, unless the applicant responds, the application will be withdrawn and returned to the applicant and the application fee forfeited.
2. **Application is Complete.** If the application is complete, the Land Use Administrator shall certify it as complete and stamp it with the date of the application acceptance. The Administrator shall notify the applicant, in writing, of the application's completeness. If a public hearing is required pursuant to this Code, the hearing will be scheduled within forty five (45) calendar days of completeness. If no public hearing is required the Administrator will review the application and issue a decision with forty five (45) calendar days.

B. Evaluation. The Land Use Administrator shall review the application to determine whether it complies with applicable standards and shall prepare a staff report detailing this determination. The report will be proved to the applicant and the appropriate review board.

C. Referral Letters. If referral letters are deemed necessary, the Land Use Administrator shall cause the application materials, or any portion thereof, to be submitted for referral review and comment by any agency, organization, or governmental entity deemed appropriate. The referral review and comment period shall be for a period of time up to thirty (30) calendar days from the date that the application is deemed complete, unless a necessary extension of not more than thirty (30) calendar days has been consented to by the applicant and the Planning Commission. The failure of any office to respond within the prescribed time period shall for the purpose of the hearing on the proposed use be an approval of such proposal.

Referral Agencies may include, but are not limited to, any of the following that in the opinion of the Land Use Administrator may be affected by the proposal or be otherwise competent to provide relevant information or analysis concerning the potential impact of the proposal.

1. The local school district;
2. A community or municipality in the vicinity of the proposal;
3. Utility, local improvement and service districts or ditch companies as applicable;

4. The Colorado State Forest Service, United State Forest Service, or the Bureau of Land Management when applicable;
5. The appropriate local soil conservation district board;
6. The Colorado State Health Department;
7. The Colorado Geological Survey;
8. The Colorado Division of Wildlife;
9. The Colorado Department of Transportation;
10. Such other agencies, entities and groups as the Land Use Administrator may deem advisable.

Section 3.230 Notice of Public Hearing

Certain Land Use Permits will require a public hearing. When a public hearing is required, the following public notice shall be required unless otherwise specified.

A. Manner and Type of Notice

1. **Notice by Publication.** At least fourteen (14) calendar days prior to the day of the scheduled public hearing before the Planning Commission, and at least thirty (30) calendar days prior to the day of the scheduled public hearing before the Board of County Commissioners or the Board of Adjustment, a notice of public hearing shall be published in a newspaper of general circulation in Conejos County. Publication of said notice shall follow a form prescribed by the County.
2. **Notice to Adjacent Property Owners.** At least fourteen (14) calendar days prior to day of the scheduled public hearing by the Planning Commission or at least thirty (30) calendar days prior to a hearing with Board of Adjustment, the Land Use Office shall mail a written notice of the public hearing by First Class Mail to the owners of record of all property within five hundred (500) feet of the boundaries of the property in question. This distance provision may be expanded up to two thousand five hundred (2500) feet by the Land Use Administrator in the case of large subdivisions and other special circumstances that so warrant.

Notice shall include a vicinity map, a short narrative describing the current zoning and proposed land use change, and an announcement of the date, time and location of the scheduled hearing.
3. **Posting of Notice.** At least fourteen (14) calendar days prior to the day of the scheduled public hearing before the Planning Commission or Board of Adjustment, the applicant shall post notice of the public hearing on the property. Such notice shall consist of at least one sign facing each adjacent public right-of-way within ten (10) feet of the property line, so as to be fully visible from that right-of-way. Such sign shall be erected no less than four feet nor more than six feet above ground level. The applicant shall engage in reasonable efforts to

maintain the sign in that location until a final decision on the application is rendered.

B. Responsibility for Notice. Public notification of the hearing is the responsibility of the Land Use Office, with the exception of posting of the property, which is the responsibility of the applicant.

Section 3.240 Conduct of Public Hearing.

Certain approvals will require a public hearing before the Planning Commission, Board of County Commissioners or the Board of Adjustment. The following are procedures for the conduct of that meeting.

A. Rights of All Persons. Any person may appear at a public hearing and submit evidence, including oral testimony, either individually or as a representative of an organization. Comment may also be submitted in written form before or during the hearing. Each person appearing at a public hearing must be identified by name and address and, if appearing on behalf of a person or organization, must state the name and address of the person or organization being represented.

B. Ex Parte Communications. Members of decision-making bodies shall not engage in communications outside of a regularly noticed public hearing with the applicants and their agents and applicants and their agents shall not engage in communications with the Planning Commission, Board, or other decision making body about applications under review or reasonably anticipated to come under review. If an ex parte communication is attempted by telephone, in person, by fax or other means outside of a regularly scheduled public meeting, the member of the decision-making body involved shall first attempt to stop the party from the prohibited behavior, then document the communication and notify the Land Use Administrator by telephone or in written form. The Administrator shall then enter that documentation into the public file. The Administrator shall report that documentation at the next meeting or hearing on the subject application. No ex parte communication shall be considered by a decision-making body, or any of its members, in making a decision on a land use permit matter.

C. Executive Sessions. An executive session may be held as needed in accordance with Colorado Revised Statute 24-6-402.

D. Order of Proceedings. When a public hearing is required under this Land Use Code the following procedures are recommended:

1. **Opening of Public Meeting.** Chair declares that the public hearing is open.
2. **Written Staff Report.** Five (5) working days prior to the date of the public hearing, the Land Use Administrator shall submit a staff report to the review body. A copy of the Staff Report shall also be provided to the Applicant at least five (5) working days in advance of the public hearing. A copy of the Staff Report shall also be available for public review if requested.
3. **Confirmation of Adequate Public Notice.** The Land Use Administrator shall report whether or not adequate notice has been accomplished pursuant to Section 3.230.

4. **Land Use Administrator Presentation.** The Land Use Administrator shall describe the applicant's proposed project, identify the standards of this Code that apply to the proposed project and provide an objective examination of the findings of fact to establish whether the application meets those standards. The Land Use Administrator will also present the comments of any referral agencies.
5. **Questions by Review Body.** The review body may ask questions of the Land Use Administrator.
6. **Applicant's Presentation.** The applicant shall make an oral presentation on behalf of the application.
7. **Questions by Review Body.** The review body may ask questions of the applicant or the Land Use Administrator.
8. **Chair Lays Ground Rules for Public Comment.** The Chair may establish whether groups present are represented by a spokesperson. The chairperson conducting the public hearing may set rules of conduct and reasonable time limits for testimony or presentation of evidence. The person offering that testimony or evidence shall have an opportunity to enter it into the record in writing at the public hearing. The public should be advised to discuss whether the application satisfies the approval criteria, not whether they are for or against the proposal.
9. **Public Comments.** Public comments and questions shall be heard. Written comments that have been received before the hearing shall be reported by the Land Use Administrator and acknowledged to be part of the hearing record. No further public comments shall be heard once this portion of the meeting has concluded.
10. **Applicant Response.** The applicant may respond to any comments or questions made by the public, the Land Use Administrator, or the review body.
11. **Questions by Review Body.** The review body may ask questions of the applicant, the Land Use Administrator, or members of the public in attendance.
12. **Land Use Administrator Response.** The Land Use Administrator may respond to any statement made by the applicant, the public, or the review body.
13. **Close or Continuance of Public Hearing.** The body conducting the hearing may close the public hearing or continue it to a fixed date and time acceptable to the applicant. Notice of the continued meeting need not be republished, however the date that the meeting will be continued to must be announced before the end of the meeting. If the hearing is not continued, it shall be closed.
14. **Deliberation and Decision.** Following testimony by the applicant, the Land Use Administrator and public and questions by the review body, the review body shall close the hearing to further testimony and proceed with deliberations.

E. Record of Public Hearing. The body conducting the public hearing shall record the public hearing by any appropriate means, including audiotape or videotape, and detailed written minutes.

F. Record of Decision. The record of decision includes: the taped record of oral proceedings, including testimony and statements of personal opinions; the minutes of the hearing and other meetings of the review body; all applications, exhibits, letters and papers submitted in a timely fashion by any person to the County regarding the application; the Land Use Administrator Report; timely referral agency reports and the decisions of the recommending and decision-making bodies. Those materials, on presentation to the County, shall become the public property of the County and shall not be removed without proper authorization.

Resolutions and surveyed plats (if required) are recorded in the Office of the Clerk and Recorder and land use changes shall be noted on the Zoning Map.

Section 3.250 Appeal Processes

A. Appeal of Administrative Decisions.

1. **Request for Review by Board.** An applicant may request review by the Board of County Commissioners of a decision made by the Land Use Administrator by filing a written request within ten (10) working days of notice of the decision, a notice of a violation of the code or a notice of termination of a non-conforming use. (This does not include interpretations of the code made by the Land Use Administrator. These are appealed to the Board of Adjustment. See Section 6.200). The written request shall include the reasons why the appellant believes that the Administrator's decision is incorrect, including any materials or evidence to support the appeal.
2. **Consideration by the Board.** Upon receiving the applicant's request for appeal, the Land Use Administrator shall schedule a public hearing before the Board of County Commissioners at a regular meeting, not more than forty-five (45) calendar days from the receipt of the applicant's request for appeal. The hearing shall be publicized in accordance with Section 3.230, however it is not necessary to post a notice of the hearing on the property or to mail notice of the hearing to adjacent property owners. The Board shall review the written request and hear testimony from the Administrator and the appellant at the public hearing conducted in accordance with the provisions of Section 3.240. The Board shall uphold the decision, modify the decision, or reverse the decision.

B. Appeal of Decisions by the Board of County Commissioners or the Board of Adjustment. Those aggrieved by a decision of the Conejos County Board of County Commissioners or the Board of Adjustment, may appeal such decisions within thirty (30) days to the Conejos County Combined Court. (This does not include appeals of decisions regarding Major Electrical and Natural Gas Facilities. For this process see Section 5.420.)

ARTICLE 5 PERMITS**DIVISION 5.1 GENERAL****Section 5.100 Permits Required**

A. Land Use Permit Required. A Land Use Permit is required for any change in land use, unless expressly exempt from Land Use Permit in the appropriate zone district section. Development or activity associated with the land use change shall not begin prior to issuance of a Land Use Permit pursuant to this code.

B. Land Use Construction Permit Required. A Construction Permit is required for all new construction, and for remodel or repair of existing buildings or structures unless expressly exempted from Construction Permit requirements by Section 5.600. Construction, remodel or repair activities shall not begin prior to issuance of a Construction Permit pursuant to this code.

C. Other Permit Requirements. In addition to the permit requirements set forth in this Article 5, the owner shall be responsible for satisfying all other state and local permit requirements applicable to the proposed land use or construction, remodel or repair activity.

DIVISION 5.2 LAND USE PERMITS**Section 5.200 Permit Conditions**

A. Validity of Permit. A Land Use Permit shall remain valid for the time period specified by the decision making body at the time of issuance of the permit, or if no time period is specified, for the life of the use.

B. Term of Permit. Commencement of the approved land use must begin and proceed in compliance with conditions of the permit within three (3) years of the date of issuance. The permit shall be deemed to have lapsed if there is no construction or conduct of the approved land use for a continuous 12-month period.

C. Extension of Permit Term. An extension of the term of the permit may be requested by the applicant. A request for extension of permit term requires public hearing and recommendation by the Planning Commission and review and public hearing by the Board of County Commissioners. The term of a permit may only be extended (1) as a condition of initial approval, or (2) within the final 18 month of the approved term of the permit.

D. Violation of Conditions of Permit. Failure to comply with permit conditions shall cause the permit to be revoked by the Board of County Commissioners, pursuant to the procedures set forth in Article 16.

E. Transfer of Ownership. Any permit for land use and construction approved in compliance with this Land Use Code shall be binding upon and run with the land. The transfer of any permit to a new owner may occur only after a statement has been filed with the Land Use Office by the transferee indicating that he/she will comply with the terms and conditions of the permit.

F. Change in Conditions of Permit. Unless otherwise provided in this code, any proposal to change the permit conditions shall require a new Land Use Permit.

Section 5.210 Violation.

Failure to obtain the permits required by these Regulations shall be a violation of the Conejos Land Use Code subject to the enforcement provisions in Article 16.

Section 5.220 Levels of Permit Review

There are two levels of review that might apply to the issuance of a Land Use Permit for uses in a particular zoning district. These are Administrative Review ("A") and Special Use Review ("S"). The Use Table in Section 4.3 indicates the level of review that will be required for a type of use based upon the zoning district.

A. Administrative Review. Certain land use changes require a minimal level of review and can be reviewed administratively in accordance with Division 5.3.

B. Special Use Review. Certain land use changes, because of their nature or location, will have the potential to cause impacts that warrant review by the Planning Commission and the Board of County Commissioners. The application and review procedure for uses requiring Special Use Review is in Division 5.4.

Section 5.230 Amendment

No approved use may be modified, structurally enlarged, or expanded in ground area unless the site plan is amended and approved in accordance with the procedures applicable to the initial approval of the use.

DIVISION 5.3 ADMINISTRATIVE REVIEW

Section 5.300 Application Submittal and Review Procedure

A. Pre-application Conference. A pre-application conference shall be held in accordance with Section 3.200.

B. Application Submittal. In addition to the application materials required in Section 3.210A, an applicant for a Land Use Permit to conduct a use subject to an Administrative Review shall submit the following.

1. **Written Description.** A detailed written description of the proposed use and a description of the impacts that the proposed use may cause.
2. **Additional Materials - Riparian Protection Overlay.** In addition to the other submission requirements contained in this Code, any person applying for a Land Use Permit for any land use activity in the Riparian Protection Overlay District shall submit the following information for the land on which the development activity is to occur:

- a. **Vegetative Cover.** A general description of the type and density of vegetation including i) deciduous trees, ii) coniferous trees, iii) high shrubs, and iv) sage, grassland, and agricultural crops.
 - b. **Wetlands.** Identification of all wetlands identified using the Federal Manual for Identification and Delineation of Jurisdictional Wetlands.
 - c. **Water Bodies.** A description of all lakes, streams, ditches and other water bodies and their classifications and standards adopted by the Colorado Water Quality Control Commission.
 - d. **Soil Investigation Report.** A report evaluating and classifying soil types, and including a discussion of erosion potential, rock falls, mud flow deposits, avalanche areas, debris fans, and drainage areas. Soil mapping from the Natural Resource Conservation Services for Conejos County and USGS geologic hazard mapping may be employed.
 - e. **Development Layout.** A plan and other documentation of the layout and scope of the proposed land use, including:
 - (1). The total land area to be physically disturbed for the construction of improvements at the development and a discussion of phasing.
 - (2). The location of building, storage yards, waste disposal areas, parking areas, utilities and other permanent structures.
3. **Additional Materials – Floodplain Overlay.** For uses located in the Floodplain Overlay the following additional materials are required.
- a. **Floodplain and Floodway Plan.** Plans prepared by a professional engineer and drawn to an appropriate scale, which depict the floodplain and floodways and overall site affected, the proposed improvements or development, the elevations of the area in question, and the location of any existing or proposed structures, fill, storage of materials and drainage facilities.
 - (1). **Elevation of Grades and Lowest Floor.** The plans should indicate at two (2) foot intervals the mean sea level elevation of all existing and finished grades and of the lowest floor (including the basement) of all new and substantially improved structures and the mean sea level elevation to which any structure or use is flood proofed.
 - (2). **Flood Proofing Methods.** The plans shall be certified by a registered professional engineer that address the additional standards in Section 5.520B.
 - b. **Permits.** Copies of all necessary permits from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act, 33 USC 1334.

C. Review Procedure.

1. **Review of Application Materials by Land Use Administrator.** The Land Use Administrator shall review the application in accordance with Section 3.220, including the mailing of referral letters, if appropriate.
2. **Land Use Administrator Decision.** Within forty five (45) calendar days of the completeness determination, the Land Use Administrator may approve, approve with conditions or deny the application for a Land Use Permit subject to Administrative Review, based upon compliance of the proposed use with the Approval Standards set forth in Section 5.500. The Land Use Administrator shall inform the applicant of the approval, conditions of approval or basis for denial in writing within five (5) working days of the decision.

D. Recordation and Change to Zone Map. If an Administrative Review Permit is approved, the resolution shall be recorded in the Office of the Clerk and Recorder and the land use change noted on the Zoning Map.

E. Annual Review of Conditions. The Land Use Administrator shall annually review each permitted use for compliance with the conditions set at the time of its approval. This review shall take place each year in the month during which the permit was originally approved.

Section 5.310 Review of Administrative Decision.

A. Request for Review by Board. An applicant may request review of the Administrator's decision by following the procedure in Section 3.250A.

DIVISION 5.4 SPECIAL USE REVIEW

Section 5.400 Application Submittal.

A. Pre-application Conference. A pre-application conference shall be held in accordance with Section 3.200.

B. Application. In addition to the application materials required in Section 3.210A, an applicant for a Land Use Permit to conduct a use subject to a Special Use Review shall submit the following.

1. **Written Description.** A detailed written description of the proposed use.
2. **Slope/Topographic Map.** A depiction of contours at an interval of five (5) feet is required on slopes of 15% or greater (13.5 degrees) where there will be a permanent change in elevation of the ground surface. This requirement may be met by providing the best mapping available from the U.S. Geological Survey highlighting areas of geologic hazards, and areas subject to landslides and avalanche.
3. **Archaeological, Cultural and Historical Resources.** If appropriate one of the following will be required: a letter of verification of a search of Inventory of

Cultural Resources from the State Historical Society or a report defining the archaeological or historical resources on the site based on information available from the State Historic Preservation Officer.

4. **Wildfire Mitigation Plan.** The applicant may be required to create a wildfire mitigation plan with the assistance of the State Forest Service, if appropriate.
5. **Impact Analysis.** A description, prepared by the applicant, of the impacts that the proposed use may cause, described in terms of the standards that apply to Special Uses in Section 5.500B, and a complete description of how the applicant will ensure that impacts will be mitigated and standards will be satisfied.

C. Additional Materials - Riparian Protection Overlay. In addition to the other submission requirements contained in this Code, any person applying for a Land Use Permit for any land use activity in the Riparian Protection Overlay District shall submit the following information for the land on which the development activity is to occur:

1. **Vegetative Cover.** A general description of the type and density of vegetation including i) deciduous trees, ii) coniferous trees, iii) high shrubs, and iv) sage, grassland, and agricultural crops.
2. **Wetlands.** Identification of all wetlands identified using the Federal Manual for Identification and Delineation of Jurisdictional Wetlands.
3. **Water Bodies.** A description of all lakes, streams, ditches and other water bodies and their classifications and standards adopted by the Colorado Water Quality Control Commission.
4. **Soil Investigation Report.** A report evaluating and classifying soil types, and including a discussion of erosion potential, rock falls, mud flow deposits, avalanche areas, debris fans, and drainage areas. Soil mapping from the Natural Resource Conservation Services for Conejos County and USGS geologic hazard mapping may be employed.
5. **Development Layout.** A plan and other documentation of the layout and scope of the proposed land use, including:
 - a. The total land area to be physically disturbed for the construction of improvements at the development and a discussion of phasing.
 - b. The location of building, storage yards, waste disposal areas, parking areas, utilities and other permanent structures.

D. Additional Materials – Floodplain Overlay. For uses located in the Floodplain Overlay, the following additional materials are required.

1. **Floodplain and Floodway Plan.** Plans prepared by a professional engineer and drawn to an appropriate scale, which depict the floodplain and floodways and overall site affected, the proposed improvements or development, the elevations of the area in question, and the location of any existing or proposed structures, fill, storage of materials and drainage facilities.

- a. **Elevation of Grades and Lowest Floor.** The plans should indicate at two (2) foot intervals the mean sea level elevation of all existing and finished grades and of the lowest floor (including the basement) of all new and substantially improved structures and the mean sea level elevation to which any structure or use is flood proofed.
 - b. **Flood Proofing Methods.** The plans shall be certified by a registered professional engineer that address the additional standards in Section 5.520B.
2. **Permits.** Copies of all necessary permits from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act, 33 USC 1334.

E. Additional Materials- Wireless Communication Facilities. Any person, firm, corporation, or another entity desiring to develop a Wireless Communication Facility (WCF) or other telecommunication facility within Conejos County must submit the following additional materials:

1. Description of support structure and antenna height.
2. Photos and/or drawings of all equipment, structures and antennas.
3. Names and addresses of telecommunication providers or users of the proposed WCF or antenna.
4. Applicant's master WCF plan for Conejos County and surrounding area.
5. Detailed account of co-location efforts.
6. If a new WCF is allowed, the owner must agree in writing to allow co-location at the new site, under reasonable terms and conditions.
7. Written and graphic description of efforts to minimize or mitigate adverse visual impacts of the proposed facility.
8. Any other information determined to be necessary by the Land Use Administrator for a determination of compliance with this Code.

F. Additional Materials- Mining. Applications for mining uses shall contain the following additional materials.

1. A description of the type of mining.
2. A mining plan/description of how mining will be conducted including:
 - a. The method of mining;

- b. The estimated dates that mining will commence and end. If the operation is intended to be intermittent the applicant should include this information.
 - c. Hours of operation.
 - d. Haul route.
 - e. Whether the mined substance will be processed on site, including crushing, screening, washing, etc.
3. Reclamation plan. A general description of the plan to reclaim the affected land for future use.

Section 5.410 Review Procedures for Special Uses

A. Review Procedure.

1. **Review of Application Materials by Land Use Administrator.** The Land Use Administrator shall review the application in accordance with Section 3.220, including the mailing of referral letters.
2. **Review and Recommendation by Planning Commission.** Notice of a public hearing before the Planning Commission shall be made in accordance with Section 3.230. The Special Use application shall be considered by the Planning Commission at a public hearing, in accordance with the provisions of Section 3.240. The Planning Commission shall recommend approval, approval with conditions or denial of the Special Use application based on the approval standards set forth in Division 5.5.
3. **Public Hearing and Action by Board.** A public hearing with the Board of County Commissioners shall be scheduled within forty-five (45) calendar days of the Planning Commission recommendation. Public notice of the hearing shall be made in conformance with Section 3.230 and the hearing shall be conducted in accordance with the provisions of Section 3.240. The Board shall approve, approve with conditions or deny the application for a Land Use Permit to conduct a Special Use.

B. Recordation and Change to Zone Map. If a Special Use Permit is approved, the resolution shall be recorded in the Office of the Clerk and Recorder and the land use change noted on the Zoning Map.

C. Annual Review of Conditions. The Land Use Administrator shall annually review each permitted use for compliance with the conditions set at the time of its approval. This review shall take place each year in the month during which the permit was originally approved.

Section 5.420 Review and Appeal Procedures for Major Electric and Natural Gas Facilities

The following special requirements are imposed by state law, and shall apply to applications for a Land Use Permit for a Major Electrical or Natural Gas Facility.

A. Notice. A public utility or power authority shall notify the Land Use Office of its plans to site a Major Electrical or Natural Gas Facility prior to submitting the permit application, but in no event later than filing a request for a certificate of public convenience and necessity pursuant to Article 5 of Title 40, C.R.S., or the filing of any annual filing with the public utilities commission that proposes or recognizes the need for construction of a new facility or the extension of an existing facility. If a public utility or power authority is not required to obtain a certificate of public convenience and necessity pursuant to Article 5 of Title 40, C.R.S., or file annually with the public utilities commission to notify the public utilities commission of proposed construction of a new facility or the extension of an existing facility, then the public utility or power authority shall notify the Land Use Office of its intention to site a Major Electrical or Natural Gas Facility when such utility or authority determines that it intends to proceed to permit and construct the facility. During the pre-application meeting, the public utility or power authority shall consult with the Land Use Administrator to identify the specific routes or geographic locations under consideration and attempt to resolve land use issues that may arise from the contemplated permit application.

B. Alternatives Analysis. In addition to the alternative described within its permit application, the public utility or power authority shall consider and present reasonable siting and design alternatives to the local government or explain why no reasonable alternatives are available.

C. Action on Application. Within ninety (90) calendar days after submission of a completed application for a Major Electrical or Natural Gas, the County shall decide whether to approve, approve with conditions or deny the application. If the County does not take final action within such time, the application shall be deemed approved. Nothing in these provisions shall be construed to supersede any timeline set by agreement between the County and a public utility or power authority applying for a Land Use Permit for Major Electrical or Natural Gas Facilities.

D. Appeal. If the County denies a permit or application of a public utility or power authority that relates to the location, construction, or improvement of Major Electrical or Natural Gas Facilities, or if the County imposes requirements or conditions upon such permit or application that will unreasonably impair the ability of the public utility or power authority to provide safe, reliable, and economical service to the public, the public utility or power authority may appeal the County action to the public utilities commission for a determination under Section 40-4-102, C.R.S., so long as one or more of the following conditions exist:

1. The public utility or power authority has applied for or has obtained a certificate of public convenience and necessity from the public utilities commission pursuant to Section 40-5-101, C.R.S., to construct the major electrical or natural gas facility that is the subject of the local government action;
2. A certificate of public convenience and necessity is not required for the public utility or power authority to construct the major electrical or natural gas facility that is the subject of the local government action; or
3. The public utilities commission has previously entered an order pursuant to Section 40-4-102, C.R.S., that conflicts with the local government action.

DIVISION 5.5 STANDARDS FOR APPROVAL**Section 5.500 Standards for Approval**

This Section includes the approval standards that will be applied by the County in its decisions to approve, approve with conditions or deny requests for an Administrative Review Permit, a Special Use Permit, or a Land Use Construction Permit.

A. General Standards for Approval. The following general approval standards shall apply to *all* uses that require a Land Use Permit.

1. **Property Rights.** The applicant can and will obtain all necessary property rights, permits and approvals necessary to conduct the activity.
2. **Comprehensive Plan.** The use is consistent with relevant provisions of the Conejos County Comprehensive Plan.
3. **Water Quality Protection.** The use shall not cause significant degradation of the quality of surface or groundwater resources
4. **Water and Wastewater.** The use shall be served by water and wastewater systems that have been deemed adequate to serve the activity. Refer to Article 13.
5. **Risk from Geologic Hazards.** The use is not subject to significant risk from geologic hazards.
6. **Utilities.** Public utilities, where available shall be used. If not available, alternative systems may be employed. Refer to Article 13.
7. **Access and Roadways.** Access to and from the use shall be safe and in conformance with applicable standards. Roads serving the proposed use have the capacity to accept the additional traffic generated by the use safely and efficiently. An access permit is required from the appropriate authority. Refer to Article 14.
8. **Visual Impacts.** The proposed use shall preserve views and vistas if possible. Screening as defined in this code may be required of uses with negative visual impacts.
9. **Compatibility.** The nature, scale, and intensity of the use are compatible with adjacent land uses and will not result in an adverse impact to adjacent land. The design of the activity shall be compatible with the surrounding natural environment.
10. **Wildlife.** The use shall not be located in significant wildlife habitat area as defined by the Colorado Division of Wildlife unless the applicant demonstrates that there is no viable alternative location. Where the activity must be located in significant wild life habitat areas, the applicant shall implement all mitigation recommended by the Division of Wildlife and the County.

B. Additional Standards for Special Use Review. In addition to the General Approval Standards in Section 5.500A, the following standards shall apply to all uses subject to Special Use Review.

1. **Air Quality.** The use shall not cause air quality to be reduced below acceptable levels established by the Colorado Air Pollution Control Division.
2. **Nuisances.** The use shall not cause a nuisance as defined within this Code.
3. **Important Areas.** The use shall not significantly degrade areas of paleontological, historic, or archaeological importance.
4. **Traffic.** The use shall not cause significant traffic congestion or unsafe traffic conditions and all impacts to the roadway system shall be mitigated through roadway improvements or impact fees, or both.
5. **Impact Mitigation.** If the use causes a twenty percent (20%) or more increase in the use of a County Road, the applicant shall be required to bear the cost of all road and bridge improvements, repairs, maintenance and permits necessitated.
6. **Erosion.** Erosion control measures shall be implemented that ensure that disturbed areas and soil stockpiles are stabilized. Disturbed areas must be revegetated within one growing season.

Section 5.510 Additional Standards for Certain Uses

A. Commercial and Industrial Uses. In addition to the General Approval Standards set forth in Section 5.500A and relevant Special Use Review Standards set forth in Section 5.500B, the following additional standards shall apply to all uses in Commercial and Industrial Zones.

1. **Outside Storage areas.** Storage areas, including recycling and salvage yards, shall be screened from view by fencing at least eight (8) feet high, landscaping or other screening approved by the decision making body, in order to minimize the visual impact on adjacent properties and public roads.
2. **Industrial Structures.** All industrial operations and activities shall be conducted wholly inside of a building or buildings if the nearest of such operation or activity is less than two hundred (200) feet from the boundary of any other zoning district. If the industrial district adjoins a residential district, screening shall be provided at the lot lines sufficient to protect on a year round basis, the privacy of adjoining residential uses.
3. **Commercial and Industrial Structures.** Openings to structures on sides adjacent to or across the street from a residential district shall be prohibited if such access or openings will cause glare, excessive noise, or other adverse effects on residential properties.
4. **Objectionable Emissions.** Dust, odors, gas, fumes, and glare shall not be emitted at levels that constitute a nuisance. A mitigation plan may be required.

5. **Noise.** Noise as measured at the property boundary shall not constitute a nuisance and shall be buffered by landscaping or other screening devices.
6. **Lighting.** Exterior lighting fixtures shall be shaded whenever necessary to avoid casting direct light on any property located in a residential district, or on any public right-of-way.
7. **Hours of operation.** Days and hours of operation shall be established to minimize impacts to adjacent land uses.
8. **Roadway System.** Impacts to the County roadway system associated with hauling, truck traffic and equipment use shall be mitigated through roadway improvements or impact fees, or both.
9. **Residential Structures.** No structure shall be used for residential purposes, except for the use of the owner or operator of the business located on the premises within a Commercial Zone. No residential structures are permitted in Industrial Zones.

B. Mining Uses. In addition to the General Approval Standards set forth in Section 5.500.A, relevant Special Use Review Standards set forth in Section 5.500.B, and Commercial/Industrial Use Standards set forth in Section 5.510 A, the following additional standards shall apply to Mining Uses.

1. **Setbacks.** Surface area disturbed shall fall within the following setbacks:
 - a. **Federal, State, Or Local Dedicated Open Space Or Conservation Areas.** No surface area disturbance caused by a mining operation shall occur in whole or in part closer than one thousand (1000) feet from a permanently dedicated federal, state, or local open space or conservation area unless a smaller setback has been approved by the federal, state or local entity with jurisdiction over the open space or conservation area.
 - b. **Adjacent Property, Irrigation Ditch Or Road Right Of Way.** No excavation, deposit of overburden, stockpiling or other mining activities associated with a mining operation shall be permitted within one hundred (100) feet of the boundary of adjacent property, irrigation ditch or private right of way.
2. **Public Roads.** Roads affected by a mining operation shall comply with the following requirements:
 - a. **Vehicle Weight.** The weight of trucks shall not exceed federal, state or local government imposed road or bridge weight capacity on approved hauling routes.
 - b. **Seasonal Traffic Limitation.** As a condition of approval, the County

DIVISION 5.6 LAND USE CONSTRUCTION PERMIT**Section 5.600 Permit Conditions**

A construction permit is required for all new construction including the installation of a mobile or manufactured home unless expressly exempt from that requirement by this code.

- A. **Validity of Permit.** A Land Use Construction Permit shall remain valid for one year.
- B. **Term of Permit.** The permit shall be deemed to have lapsed if there is no construction for a continuous 12-month period.
- C. **Extension of Permit Term.** An extension of the term of the permit may be requested by the applicant and approved by the Land Use Administrator.
- D. **Change in Conditions of Permit.** Any proposal to change to the size, purpose or location of the structure shall require a new Land Use Permit.

Section 5.610 Violation

Failure to obtain a construction permit as required by these Regulations shall be a violation of the Conejos Land Use Code subject to the enforcement provisions in Article 16.

Section 5.620 Exemptions from Construction Permit Requirement

The following construction, remodel or repair activities are exempt from the requirement to obtain a Construction Permit. Exemption from the Construction Permit requirements is not an exemption from other state or local permit requirements applicable to the proposed construction activity.

- A. **Household Repairs.** Routine household repairs, maintenance, decorating, or landscaping performed by the homeowner or a contractor which:
 - 1. Does not result in significant alterations to the existing structural, electrical or plumbing systems, or significantly increase the enclosed floor area of a structure.
 - 2. Does not result in creating or exacerbating nonconformancy of the lot or use with this Land Use Code.
- B. **Roofing.**
 - 1. Minor roof repairs using less than one hundred (100) square feet of material.
 - 2. Re-roofing greater than one hundred (100) square feet if the existing roof has fewer than three existing layers of roofing material and if the work is substantially performed by the owner.

C. Accessory Structures.

1. Open structures such as stock pens or corrals, located on land zoned Agricultural or Rural customarily erected and used for agricultural purposes. This exemption does not include pole barns or hay sheds.
2. Enclosed Accessory Structures which are less than 120 square feet in area.

D. Fences. Decorative fences and stock fences constructed pursuant to the provisions of Article 46 Title 35, C.R.S.

Section 5.630 Temporary Buildings or Structures

The Land Use Administrator may issue a permit for construction or placement of on-site temporary buildings or structures for construction management and material storage, and for other temporary uses approved pursuant to this code. Permits for temporary buildings or structures shall be issued pursuant to the application and review procedure for Construction Permits set forth in Section 5.640 below.

- A. Term.** Construction Permits for temporary buildings or structures for the purpose of construction management and material storage shall be issued for a maximum period of twelve months and may be renewed a maximum of two additional 12-month periods.
- B. Removal.** The temporary building or structure must be removed by the date of expiration specified in approval of the Construction Permit.

Section 5.640 Application Submittal and Review

A. Application Submittal. An application must be submitted in accordance with Section 3.210A as well as the following additional information:

1. **Site Plan.** A site plan acceptable to the Land Use Administrator, which contains the site plan information required in Section 3.210A5 as well as the following elements:
 - a. Drawings showing the height of the proposed structure above existing grade.
 - b. For building lots with 20% or greater slope where construction is proposed, engineering studies that demonstrate feasibility of proposed construction and discuss construction techniques proposed for mitigation of slope development issues and hazards.

B. Review Procedure.

1. **Review of Application Materials by Land Use Administrator.** The Land Use Administrator shall review the application in accordance with Section 3.220. (No referral letters are required.)
2. **Land Use Administrator Decision.** Within five (5) working days of the completeness determination, the Land Use Administrator may approve, approve

with conditions or deny the application for a Construction Permit, based upon compliance of the proposed construction, remodel or repair activity with the Approval Standards set forth in Section 5.660. The Land Use Administrator shall inform the applicant of the approval, conditions of approval or basis for denial in writing within five (5) working days of the decision.

Section 5.650 Review of Administrative Decision

An applicant may request review of the Administrator's decision by the Board of County Commissioners by following the procedure in Section 3.250A.

Section 5.660 Standards for Approval

In addition to the applicable General Standards for Approval in Section 5.500, the following additional standards must be met.

- A. **Compliance with Zone District Requirements.** The new construction, remodel or repair meets the applicable zoning district standards for setbacks, building height, lot coverage, and number of residences allowed.
- B. **Manufactured Home/Mobile Home.** Construction shall be in compliance with applicable state and industry standards and the structure will be safe and habitable. No pre-1976 mobile homes are permitted in Conejos County. (See Section 7.110C for information regarding legally nonconforming pre-1976 mobile homes.) No mobile homes are permitted for use as a storage facility. Refer to Article 8.
- C. **Slope Development.** The proposed construction is feasible and appropriate construction techniques will be utilized to mitigate hazards for development on slopes of 20% or greater.
- D. **Address of Property.** The structure has received a physical address through the County. Refer to Article 14.



**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CONEJOS COUNTY
CONEJOS COUNTY RESOLUTION NUMBER C-05-18**

A RESOLUTION ADOPTING THE 2005 CONEJOS COUNTY LAND USE CODE

WHEREAS, Conejos County, Colorado is empowered pursuant to 29-20-104, C.R.S. to plan for and regulate the use of land within the unincorporated areas of the county, and

WHEREAS, Conejos County, Colorado is empowered pursuant to 30-28-111, C.R.S. to create a zoning plan for the unincorporated areas of the county, and

WHEREAS, the 2005 Conejos County Land Use Code has been prepared for the unincorporated area of the County, and

WHEREAS, the 2005 Conejos County Land Use Code has been certified by the Planning Commission as being the complete and final draft and has been submitted in its entirety to the Board of County Commissioners, and

WHEREAS, the Board of County Commissioners have been involved in the process of revising and updating the 2005 Conejos County Land Use Code and have reviewed the final draft of the Code, and

WHEREAS, the Board of County Commissioners and the Land Use staff have held two town meetings within Conejos County to review the proposed code with the public and made copies of the proposed code available throughout the county for anyone interested in reviewing it, and

WHEREAS, the Board of County Commissioners conducted a public hearing on May 5th, 2005 to consider adoption of the 2005 Conejos County Land Use Code upon proper publication in a legal newspaper of general circulation in the County of Conejos, and

WHEREAS, a hearing was duly conducted by the members of the Board of County Commissioners at which hearing interested persons were given an opportunity to be heard, and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CONEJOS COUNTY, COLORADO:

1. That the 2005 Conejos County Land Use Code, be and hereby is adopted; and
2. That a copy of this signed Resolution shall be attached to each copy of the 2005 Conejos County Land Use Code and shall serve as an attestation that each such copy is a true and correct copy of the Code as adopted.

THIS RESOLUTION WAS CONSIDERED, DISCUSSED AND ADOPTED ON THE 2nd DAY OF JUNE, 2005 AT A MEETING OF THE BOARD OF COUNTY COMMISSIONERS AT WHICH A MAJORITY OF THE MEMBERS WERE PRESENT.

APPROVED on Motion of Commissioner BAGWELL, Seconded by
Commissioner Mc CARROLL, and passed on a vote of 3 for and 0 against on
this 2nd day of June, 2005.

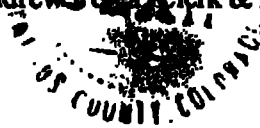

John Sandoval, Chairman


Robert Bagwell


Steve McCarroll

ATTEST:


Andrew Perea, Clerk & Recorder



BEFORE THE PLANNING COMMISSION**A STATEMENT RECOMMENDING THE ADOPTION OF THE 2005 CONEJOS COUNTY LAND USE CODE AND CERTIFYING A FINAL DRAFT OF SAID CODE.**

WHEREAS, Conejos County, Colorado is empowered pursuant to 29-20-104, C.R.S. to plan for and regulate the use of land within the unincorporated areas of the county, and

WHEREAS, Conejos County, Colorado is empowered pursuant to 30-28-111, C.R.S. to create a zoning plan for the unincorporated areas of the county, and

WHEREAS, the 2005 Conejos County Land Use Code has been prepared for the unincorporated area of the County, and

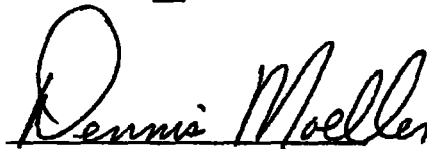
WHEREAS, the Planning Commission has been involved in the process of revising and updating the 2005 Conejos County Land Use Code and has reviewed the final draft of the Code, and

WHEREAS, the Planning Commission believes it is in the best interest of the County that Conejos County adopt a new land use code,

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF CONEJOS COUNTY, COLORADO:

That the 2005 Conejos County Land Use Code is hereby certified as the complete and final draft to be submitted in its entirety to the Board of County Commissioners and that the Planning Commission recommends it for approval by the Board of County Commissioners.

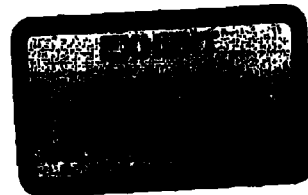
MOVED, SECONDED AND ADOPTED ON THE 25th DAY OF MAY, 2005 BY THE AFFIRMATIVE VOTES OF NOT LESS THAN A MAJORITY OF THE ENTIRE MEMBERSHIP OF THE COMMISSION, BY A VOTE OF 5 IN FAVOR AND 0 OPPOSED.



Dennis Moeller, Chair

Conejos County Planning Commission

5/25/05

**ARTICLE 2 DEFINITIONS****DIVISION 2.1 GENERAL****Section 2.100 Definition of Words and Phrases**

For the purposes of this Land Use Code, the following words and phrases are defined as follows:

Abatement. To remove the rubbish as prescribed in the notice of violation.

Accessory Dwelling. A second dwelling unit for use as a complete independent living facility on the same parcel as a permitted principal use.

Accessory Structure. A structure on the same lot with, and incidental and subordinate to, the principal structure, including but not limited to garages, sheds, barns, greenhouses, etc.

Accessory Use. An accessory use is a use customarily incidental to and on the same parcel as the main use. A use listed herein may be an accessory use if the Administrator determines that the use is customarily incidental to a main use.

Administrator. Land Use Administrator.

Administrative Review. A minimal level of review that can be reviewed administratively in accordance with Division 5.3.

Agriculture. The use of land for farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, and animal and poultry husbandry and the necessary accessory uses for packing, treating, or storing the produce; provided however, that the operation of any such accessory uses shall be secondary to that of normal agricultural activities and provided further that these uses shall not include uses that are defined as Confined Animal Feeding Operations.

Agricultural Products Distribution or Sales at Point of Production. A location for the distribution, retail sale or wholesale of agricultural or horticultural products that are grown on site, excluding live animals.

Agricultural Products Processing and Storage at Point of Production. The processing and storage of agricultural products grown on site, including but not limited to cleaning, sorting, grading, packaging, milling, or storing of products that are intended for direct human or animal consumption or use, excluding live animals.

Agricultural Products Processing, Storage, Distribution or Sale off Site. The processing, storage, and distribution of agricultural products brought to the site, including but not limited to cleaning, sorting, grading, packaging, milling, or storing of products that are intended for direct human or animal consumption or use. Or the distribution or sale of agricultural products, which are not grown on site and which are intended for direct human or animal consumption or use, excluding live animals.

Amateur Radio Facilities. Amateur Radio Facilities shall mean typical shortwave radio equipment used by private individuals and clubs for the purpose of non-commercial communication.



Animal Unit. A unit of measure to determine a comparable number of animals. For purposes of this code, an animal unit shall mean one animal, or one female animal and its offspring until weaned.

Antenna Array. An Antenna Array shall mean one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). The Antenna Array does not include the Support Structure as defined below.

Applicant. The owner, or the owner's duly designated representative, of land for which a Land Use Permit has been requested.

Base Flood. The flood having a one percent chance of being equaled or exceeded in any given year.

Board of Adjustment. The Board of Adjustment of Conejos County.

Board or Board of County Commissioners. The Board of County Commissioners of Conejos County.

Building. Any structure designed or intended for the support, enclosure, shelter, or protection of persons, animals, chattels, or property, excluding fences.

Building Contracting Shop. A facility providing for general building repair, service, and maintenance including installation of plumbing, roofing, signs, electrical, air conditioning, and heating.

Building Material Store. A retail sales site for building materials which may include a mix of indoor and outdoor sales and storage areas.

Campground, Commercial. A parcel of land used for the accommodation of tents and/or recreational vehicles on a temporary basis for recreational purposes and operated for the pecuniary benefit of the owner of the parcel of land, his agents, lessees, or assignees.

Car Wash. An area of land and/or a structure with machine- or hand-operated facilities used principally for the cleaning, washing, polishing, or waxing of motor vehicles.

Carpentry, Woodworking or Furniture Marking Facility. A facility for the making, repairing, or refinishing of furniture or wood products for sale.

Cemetery. Property used for the interring of the dead, not including burial plots on privately owned land as allowed by the State of Colorado.

Church. A facility principally used for people to gather together for public worship, religious training, or other religious activities.

Co-location/Site Sharing. Co-location/Site Sharing shall mean use of a common WCF or common site by two or more wireless license holders or by one wireless license holder for more than one type of communications technology and/or placement of a WCF on a structure owned or operated by a utility or other public entity.



Compost Processing, Commercial. A facility where organic materials are converted into a humus-like material under a process of managed biological decomposition and available for wholesale or retail sale.

Comprehensive Plan. The Conejos County Comprehensive Plan, or any portion thereof, adopted by the Conejos County Board of County Commissioners establishing the goals, objectives and policies of the County.

Condominium. A common interest community building in which portions of the building are designed for separate ownership.

Confined (Concentrated) Animal Feeding Operations. A concentrated, confined animal or poultry growing operation (facility) for meat, milk or egg production or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement for forty five (45) calendar days or longer in any 12 month period and crop or forage growth or production is not sustained in the area of confinement. Two or more animal-feeding operations under common ownership or management are deemed to be single animal-feeding operation if they are adjacent or utilize a common area or system for manure disposal. "Confined (Concentrated) Animal Feeding Operations" meet one or more of the following criteria:

1. Average Working Capacity of 1000 or more animal units
2. Case by case designation under one of the following criteria
 - a. Pollutants are discharged into waters of the state through a manmade ditch, flushing system or other similar manmade devise; or
 - b. Pollutants are discharged directly into waters of the state which originate outside of the facility and pass over, cross through the facility or otherwise come into direct contact with the animals confined in the operation; or
 - c. The animal feeding operation is in a location which reasonably could be expected to adversely affect a hydrologically sensitive area.

Contractor Equipment. Storage of construction materials, equipment, vehicles or machinery, unrelated to agriculture.

Convenience Store. Any retail establishment selling consumer products including primarily prepackaged food and household items, having a gross floor area of less than 5,000 square feet. A convenience store may also have associated retail sale of gasoline and other petroleum products.

County. The County of Conejos, State of Colorado.

Crop Production Cultivation and Harvesting. The production of agricultural or horticultural products for sale.

Custom Meat or Poultry Processing Facility. A facility for the processing of meat and poultry for individuals, not intended for resale on the premises, including but not limited to the butchering, cutting, dressing, and packaging of meat and poultry products.

Day Care Center. A commercial facility subject to licensing by the state that provides less than 24-hour care for children.

Density. A unit of measurement; the number of dwelling units per acre of land.



Development. Any activity or construction, excluding normal agricultural activities, that changes the basic character or use of the land.

Dwelling Unit. One or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary and sleeping facilities.

Educational Facility. Buildings and property used for educational or research activities associated with an academic institution which has curriculum for technical or vocational training, kindergarten, elementary, secondary, or higher education, including residential facilities for faculty, staff, and students.

Emergency Care Facility. A health care facility, providing primarily outpatient emergency care for the diagnosis and treatment of individuals.

Equestrian Center. An establishment where fifteen (15) or more different people per month, other than the owner or manager of the property, are, for a fee, trained or instructed in riding, driving, or showing horses.

Excavations Unrelated to Mining. Excavations where the excavated material is used on the same parcel from which it is removed or, from contiguous parcels owned by the same owner, for farm and ranch activities such as land leveling, farm road repair, digging of ponds for storage of irrigation water, etc. as allowed by state and federal law.

Farm or Garden Supply Store. A retail site for farm or garden supplies which may include a mix of indoor and outdoor sales and storage areas.

Federal Aviation Administration (FAA). The federal agency responsible for aircraft safety.

Fire Station. A facility operated by a municipality, fire district, or department which houses fire equipment and may be used for the housing of personnel and associated meetings.

Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from either the overflow of watercourses, or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Plain. The channel and the relatively flat area adjoining the channel of a natural stream or river that has been or may be covered by floodwater.

Floodproofing. Any combination of provisions, changes, or adjustments to structures, moveable objects, or properties for the purpose of the reduction or elimination of the potential for flood damage.

Floodway. The channel of a natural stream or river and portions of the flood plain adjoining the channel, which are reasonably required to carry and discharge the floodwater or flood flow of any natural stream or river.

Forest Management Plan. An agreement which includes a plan to aid the owner of forest land in increasing the health, vigor, and beauty of forest land through use of forest management practices; and which has either been executed between the owner of forest land and the Colorado State Forest Service, or executed between the owner of forest land and a professional forester and



has been reviewed and has received a favorable recommendation from the Colorado State Forest Service; and which has been determined to be complied with through the required annual reports from the State Forest Service to the County Assessor pursuant to Section 39-1-102(4.4), C.R.S, as amended.

Forestry, Commercial. Establishments on privately owned forest land which are primarily engaged in the operation of timber tracts, tree farms, forest nurseries, or the logging, harvesting or gathering of forest products for commercial purposes.

Geologic Hazard. A geologic phenomenon that is so adverse to past, current, or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes but is not limited to: Avalanches, landslides, rock falls, mudflows, and unstable or potentially unstable slopes; Seismic effects; Radioactivity; and Ground subsidence.

Geologic Hazard Area. An area that contains or is directly affected by a geologic hazard.

Golf Course. A tract of land laid out for a driving range and/or at least nine holes for playing the game of golf and improved with tees, greens, fairways, and hazards and that may include a clubhouse and shelter.

Group Home. A facility subject to licensing by the state to be occupied as a group home for the care of persons with special needs.

Hazard. A significant source of risk, danger or peril resulting from natural phenomena or conditions including those precipitated or caused by activities of man.

Height of Building. The vertical distance from the "grade" to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the average heights of the highest gable of a pitch or hip roof.

Historical Resource. Evidence of human activities that represent facets of history in the locality such as sites, structures, and objects; places where significant historical or unusual events occurred; and places associated with an important person or group in the past.

Home Occupation. A commercial business use conducted in a single family or duplex dwelling and/or accessory structure by residents of the premises and that does not change the residential character or exterior appearance of the dwelling and/or accessory structure, nor does it unreasonable affect the ability of neighboring residents to enjoy the peaceful occupancy of their homes. A home occupation may utilize no more than 50% of the combined square footage of the dwelling and/or accessory structure on the property and may employ not more than one person who does not reside on the premises. All parking required to accommodate a home occupation must be provided on the site of the home occupation. Each home occupation is limited to one sign, which is a maximum of sixteen (16) square feet and which must be located on the same lot as the home occupation.

Hospital. An institution where people are given medical attention and treatment, including related facilities such as laboratories, outpatient clinics, and staff offices.

Impact. The direct or indirect effect or consequence resulting from a development upon land, the environment, the community or any part or segments thereof. The term shall include, but not be limited to, physical, environmental, economic, visual, auditory or social consequences or effects.

Improvements. Street grading and surfacing, curbs and gutters, sidewalks, crosswalks, water mains, sanitary and storm sewers, culverts, bridges, general landscaping, electrical transmission facilities, natural gas or telephone lines, or such other installations as may be designated by the Board.

Industrial Facility or Activity. Manufacturing, fabrication, machining, industrial storage, processing and shipping facilities; mineral processing; concrete or asphalt batch plants and similar activities or uses and commonly known as industrial in nature.

Irrigation Ditch. Any artificially-constructed channel used to carry water from a stream, lake, reservoir or other source to agricultural lands for the purpose of watering crops, forage or livestock. Also sometimes known as an acequia.

Individual Sewage Disposal System (ISDS). A system, permitted and constructed pursuant to State law, for the treatment and disposal of sanitary sewage in the ground on the lot upon which the primary use is located.

Junk. Any scrap, waste, reclaimable material, or debris, whether or not stored, for sale or in the process of being dismantled, destroyed, processed, salvaged, stored, baled, disposed or other use or disposition. May include, but is not limited to, unregistered, inoperable vehicles, tires, vehicle parts, equipment, metal, glass, building materials, household appliances, machinery, wood or lumber.

Kennel. (1) A lot or building in which four or more dogs or cats, at least four months of age, are kept commercially for board, propagation, or sale or (2) a location for housing, breeding, exhibiting, researching, or rehabilitating any and all non-domestic animals as identified by the Colorado Division of Wildlife. Species listed as prohibited by the Colorado Division of Wildlife are not allowed.

Land Use Permit (LUP). A permit issued by the County required for any land use activity subject to this code.

Laundry or Dry Cleaner. A facility for the cleaning or laundering of garments, fabrics, rugs, draperies, or other similar items on a commercial or bulk basis.

Livery or Horse Rental Operation. A facility which offers horses, mules, donkeys or other animals for hire, or organizes and/or supervises groups, for riding off or on the property.

Livestock and Animal Husbandry. Domestic animals that are used for food for human or animal consumption, breeding, draft or profit.

Lot. A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used developed, or built upon.

Lot Line.

1. **Front.** That part of a lot line dividing a lot from a road. On a corner lot, only one lot line shall be considered as a front line. The shorter lot line shall be

considered the front unless the property owner chooses another lot line dividing the lot from a road.

2. **Rear.** The line opposite from and generally parallel to the front line. In the event no lot line is opposite and parallel to the front lot line, there shall be no rear.
3. **Side.** All lot lines other than front lot lines or rear lot lines. A triangular lot has two side lot lines and no rear lot line.

Major Electrical or Natural Gas Facilities. Major electrical or natural gas facilities include one or more of the following:

1. Electrical generating facilities.
2. Substations used for switching, regulating, transforming, or otherwise modifying the characteristics of electricity.
3. Transmission lines operated at a nominal voltage of sixty-nine thousand volts or greater.
4. Structures and equipment associated with such electrical generating facilities, substations, or transmission lines.
5. Structures and equipment utilized for the local distribution of natural gas service including, but not limited to, compressors, gas mains, and gas laterals.

Manufactured Home: Any pre-constructed building unit or combination of pre-constructed building units. These homes are commonly built on a chassis with wheels and are traditionally thought of as being capable of being moved from site to site. Such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for the occupancy by persons for residential purposes, in either temporary or permanent (on an engineered permanent foundation) locations and which unit or units are not licensed as a vehicle. Manufactured home include mobile homes, manufactured homes built to the HUD standards and factory-built units built to the building code standards adopted by the Colorado Division of Housing and certified pursuant to the "National Manufactured Standards Act of 1974," 42 U.S.C. 5401 *et seq* as amended.

Mineral Resource (Other than Natural Gas or Oil). An inanimate constituent of the earth in a solid, liquid, or gaseous state which, when extracted from the earth, is usable in its natural form or is capable of conversion into a usable form as a metal, a metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material. For the purpose of this Code, this definition does not include water, geothermal resources, or natural gas or oil.

Mineral. An inanimate constituent of the earth in a solid, liquid, or gaseous state which, when extracted from the earth, is useable in its natural form or is capable of conversion into a useable form as a metal, a metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material. For the purposes of this article, this definition does not include surface or subsurface water, geothermal resources, or natural oil and gas together with other chemicals recovered therewith, but does include oil shale.



Mining. The development or extraction of a mineral from its natural occurrences on affected land. The term includes, but is not limited to open mining and surface operation and the disposal of refuse from underground and in situ mining. The term includes any of the following operations on affected lands: Transportation; concentrating; milling (crushing); evaporation; or other processing as allowed by State law. The term does not include: The exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe; the extraction of geothermal resources; smelting, refining cleaning, preparation, transportation, and other off-site operations not conducted on affected land. Exceptions to this use include: excavations below finished grade for basements and footings of a building, retaining wall or other structures authorized by a valid building permit, or authorized by a grading permit.

Mobile Home. A transportable unit which is built on a permanent chassis and designed to be used as a dwelling without permanent foundation when connected to required utilities, and which includes the plumbing, heating, air conditioning, and electrical systems contained therein.

Mobile Home Lot. A plot of ground within a mobile home park legally established under this Code, designed for the accommodation of one mobile home to be installed for the purpose of a single-family dwelling in compliance with the provisions of this Code.

Mobile Home Park. A parcel of land used for the continuous accommodation of five or more occupied mobile homes and operated for the pecuniary benefit of the owner of the parcel of land, his agents, lessees, or assignees. Mobile Home Park does not include mobile home subdivisions or property zoned for manufactured home subdivisions.

Monopole Tower. Monopole Tower shall mean a structure composed of a single spire used to support telecommunications equipment. The monopole tower is a stand-alone structure consisting of a support structure, antenna and associated equipment.

Mortuary. A place for the storage of human bodies prior to their burial or cremation.

Multi-family Dwelling. A structure designed, arranged or intended for use as two or more dwelling units.

Nonconforming Use. A building, structure, or use of land existing at the time of enactment of this Code and which does not conform to the regulations of the district or zone in which it is situated.

Nuisance. Conditions, or action or lack of action that cause conditions, which are detrimental to the health, comfort, safety or welfare of the public, or that cause or tend to cause substantial annoyance, inconvenience or injury to persons exposed to the conditions or that cause or tend to cause damage to property.

Nursing, Convalescent, or Residential Care Facility. A facility subject to licensing by the state which provides 24-hour residential care to persons who are not related by blood, marriage, or adoption to the owner, operator, or manager of the facility. A Nursing, Convalescent, or Residential Care Facility provides some level of skilled nursing or medical service to the residents.

Oil and Gas Drilling or Production. Any operation intended to discover, develop, recover and/or process oil and/or gas.



Open Agricultural Uses. Agricultural uses which do not have structures, other than accessory structures, associated with their operation, including but not limited to the grazing, keeping and use of livestock, the production of agricultural or horticultural products, and accessory storage.

Overlay Zone. Zones that are superimposed over the existing zone district. Regulatory requirements in these zones are in addition to those of the underlying zone district.

Overnight Lodging. A facility or structure offering lodging accommodations on a daily basis to the general public. This definition includes such uses as a hotel or motel, resort lodge, conference center, guest ranch, bed and breakfast or a commercial boarding house. The Overnight Lodging facility may also include incidental business uses commonly associated with the main lodging use.

Parcel. See "Lot".

Park or Playfield. A tract of land, designated and used by the public for active and passive recreation.

Planned Unit Development (PUD). A customized zoning designation, the purpose of which is to permit and encourage greater flexibility and innovation so that the development is compatible with the site's physical and environmental characteristics. The PUD provides an opportunity for a mixture of uses and housing types in a coordinated manner that may not be possible in a traditional zoning district.

Planning Commission. The Conejos County Planning Commission

Printing or Publishing Establishment. A facility for the reproduction, cutting, printing or binding of materials on a bulk basis, using lithography, offset printing, blue printing, silk screening, or similar methods.

Professional Office. An office for professionals including but not limited to government, physicians, dentists, lawyers, realtors, architects, engineers, artists, musicians, designers, teachers, accountants, and others, who, through training are qualified to perform services of a professional nature, and where no storage or sale of merchandise exists. This use includes medical and dental clinics and banks.

Public Hearing. A meeting called by a public body for which public notice has been given and which is held in a place where the general public may attend to hear issues and express their opinions.

Public Utility Central Office Building. A building owned and operated by a public utility company and which is open to the public.

Public Utility Facility. Buildings, structures, and facilities, including generating and switching stations, poles, lines, pipes, pumping stations, repeaters, antennas, transmitters and receivers, valves, and all buildings and structures related to the furnishing of utility services (including a wind or solar energy production facility), such as electric, gas, telephone, water, sewer, and public transit, to the public, but excluding what is defined as Major Electrical or Natural Gas Facilities.

Ranch. A parcel of land which is used for raising of livestock.



Reception Halls and Community Meeting Facilities. A facility used for social and cultural activities and open to the public or a designated part of the public.

Recreation Center. A public place designed and equipped for the conduct of sports and leisure-time activities.

Recreational Vehicle (RV). A transportable structure or self-propelled vehicle with or without flexible, removal, or collapsible walls and partitions, designed to be used as a temporary dwelling for travel, recreation or vacation uses. The term "recreational vehicle" shall include motor home, camper bus and travel trailer, but shall not include pickup trucks with camper shells that extend one foot or less above the cab of the truck.

Recreational Vehicle (RV) Park, Commercial. A parcel of land that has been developed for occupancy by recreational vehicles for the pecuniary benefit of the owner of the parcel of land, his agents, lessees, or assignees. RV Park does not include subdivision developments in which RV lots are individually owned.

Recycling Collection and Processing Facility. A lot or parcel of land, with or without buildings, where recyclable materials are collected and processed. Processing includes but is not limited to baling, briquetting, compacting, flattening, crushing, mechanical sorting, shredding, and cleaning.

Restaurant or Bar. A commercial establishment designed primarily to serve food or alcohol to customers.

Retail or Personal Service Facility. An establishment for the retail sale of merchandise or the provision of personal services. A retail facility includes but is not limited to antique or art shops, bakery, clothing, department, drug, dry good, florist, furniture, gift, grocery, hardware, hobby, office supply, package liquor, paint, pet, shoe, sporting, or toy stores. A personal service facility includes but is not limited to barber or beauty shop, optometrist shop, photographic studio, or travel bureau. This does not include a laundry or dry cleaner which is defined separately.

Riparian/Riparian Area. Related to, living or located on the bank of a natural watercourse or lake. Riparian areas include groups of plants, animals and aquatic communities whose presence is either directly or indirectly attributed to water-influenced or water-related factors. Areas exempt from this definition are manmade agricultural structures and devices including irrigation ditches, sprinklers and artificial ponds.

Road. See "Street".

Rubbish. Garbage, trash, and junk including, but not limited to: unwanted or discarded household items; waste from building construction, remodeling and repair; tree branches, grass and shrub clippings, leaves or other general yard and garden waste; motor vehicle parts or tires or abandoned, unlicensed or inoperable motor vehicles, including without limitation mobile or manufactured homes, particularly those not safe or fit for human habitation; newspapers, magazines, packaging materials, waste paper or cardboard; dead animal carcasses; and any other unsightly or discarded material which causes or is likely to cause a public hazard or nuisance, or is unacceptably offensive in light of community standards of cleanliness or generally accepted neighborhood aesthetics.



Rural. The character of an area that is primarily low-density residential, unimproved and open.

Salvage Yard. An area where junk is collected, bought, sold, exchanged, stored, baled, packed or handled.

Saw Mill. A facility for the storage, sales, and milling of forest products, not including the cutting of firewood.

Screening. A permanent, opaque, solid fence or wall approved by the decision making body, which will minimize the visual impact of a certain use from adjacent properties and public roads. Screening shall be a minimum of 8 feet in high, shall conceal the use on a year round basis, be compatible with surroundings, and be relatively maintenance free and durable.

Setback. A distance measured from the lot line, designating the area in which buildings may not be erected. See "Lot Line"

Sewage. Waste matter carried of by sewers or drains.

Sign. Any object or device or part thereof situated outdoors or indoors which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, products, service, event or location by any means including words, letters, figures, designs, symbols, fixtures, colors, motion, illumination or project images, excluding traffic control devices.

Single-Family Dwelling. A building which is occupied or which is arranged, designed, and intended to be occupied, by one family and containing only one kitchen plus living, sanitary and sleeping facilities, but not including hotels, motels, tents, seasonal vacation cabins, camper trailers, or other structures designed or used primarily for temporary occupancy. A single-family dwelling shall also include a mobile or manufactured home that is installed and has received permits in accordance with the provisions of this code. A single-family dwelling must have indoor plumbing and be serviced by adequate water, sewer and public utility systems.

Solid Waste Disposal Site and Facility. The location and facility at which the collection, storage, treatment, utilization, processing, or final disposal of solid wastes occur.

Solid Waste Transfer Facility. A facility at which wastes, awaiting transportation to a disposal site and facility, are transferred from one collection vehicle to another.

Special Districts. Quasi-municipal corporations established under state statute to provide public facilities or services.

Special Use Review. Review of certain land use changes that, because of their nature, or location warrant review by the Planning Commission and the Board of County Commissioners in accordance with Division 5.4.

Storage Facility, Commercial. A commercial facility for the storage of personal items in individual units.

Street. Any vehicular way that: (1) is an existing state, county, or municipal roadway; (2) is shown upon a plat approved pursuant to law; (3) is approved by other official action; or (4) is



shown on a plat duly filed and recorded in the office of the County Clerk before the adoption of any land use regulations.

Structural Alterations. Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, roof or exterior walls.

Structure. Anything constructed or erected upon and attached to the ground. "Structure" shall include mobile or manufactured homes.

Substantial improvement. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimension, of the structure. The term does not, however, include any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Support Structures/Facilities for WCF. Support Structures/Facilities shall mean a facility such as a small structure or equipment facility and associated electronic devices such as connection cables directly related to or connected with the support structure that houses the Antennae Array.

Temporary Construction or Sales Office. A structure without any foundation or footings used during a construction period or for sales within a new development and that is removed within a designated time period.

Temporary Outdoor Activity. Happenings that are carried out primarily out of doors for a fixed period of time and including flea markets, fireworks displays, speeches, seasonal sales, swap and shop markets, racing meets, circuses, carnivals, concerts, and parades.

Temporary Special Use. A use that receives a Special Use Permit as a temporary use. Land Use Permits for temporary uses are regulated and will be limited in duration.

Temporary Use. A use established for a limited duration with the intent to discontinue such use upon the expiration of the time period.

Temporary Wireless Communication Facility (Temporary WCF). Temporary Wireless Communication Facility shall mean a WCF to be placed in use for one hundred twenty (120) or fewer calendar days.

Theater, Indoor. A building or part of a building devoted to showing motion pictures or for dramatic, dance, musical, or other live performances.

Traditional Religious Structure. A structures for religious purposes such as a chapel, morada, sweat lodge, medicine lodge, etc, which is primarily for the use of the property owner. A religious structure that is intended for public use is considered to be a church and shall be reviewed as such.

Truck Stop. A retail facility for the dispensing of motor fuels or other petroleum products directly into motor vehicles. A truck stop may include a restaurant, overnight accommodations, showers and other facilities intended to serve travelers.



Use. The purpose for which any land, structure or building is designed, maintained or occupied.

Vacation. The process of eliminating all or a portion of a public road, street, alley or easement.

Variance. An authorization, by the Board of Adjustment, for the construction or maintenance of a building or structure, which due to setback requirements, height of building, lot coverage or minimum lot size, would otherwise be prohibited by this Code.

Vehicle Sales or Rental Lots. An open area, other than a right-of-way or public parking area, used for display, sale, or rental of new or used vehicles in operable condition and where no repair work is done.

Vehicle Service Center. A facility for the retail sale of gasoline and other petroleum products and/or where maintenance activities such as engine tune-ups, lubrication, minor repairs, and carburetor cleaning are conducted.

Veterinary Clinic. A place where animals are given medial care and the boarding of animals is limited to short-term care incidental to the hospital use.

Warehouse and Distribution Center, Non-agricultural. A building for the storage of goods and materials by the owner of the goods, or operated for a specific commercial establishment or group of establishments in a particular industrial or economic field, or an establishment engaged in the receipt, storage and distribution of goods, products, cargo and materials.

Wireless Communications. Wireless Communications shall mean any personal wireless services as defined in the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that currently exist or that may in the future be developed.

Wireless Communication Facility (WCF). WCF shall mean any unstaffed facility for the transmission and/or reception of wireless telecommunications services, usually consisting of an Antenna Array, connection cables and Equipment Facility, and a Support Structure to achieve the necessary elevation.

Yard. The space on the same lot as a building or structure that is unoccupied and open to the sky.

Zoning. The delineation of districts and the establishment of regulations governing the use, placement, spacing, and size of land and buildings.



ARTICLE 13 WATER, WASTEWATER AND PUBLIC UTILITIES

DIVISION 13.1 WATER

Section 13.100 General Requirements

A. **Quality.** A water supply that is in compliance with the drinking water standards of the Colorado Department of Public Health and Environment shall be provided for all new residential lots and for all approved uses where applicable. If treatment is necessary, water supplies shall be treated by methods acceptable to the Colorado Department of Public Health and Environment.

Any treatment of a private water supply shall be in accordance with applicable state and local laws and regulations.

B. **Quantity.** There shall be a sufficient quantity, dependability and pressure to provide an appropriate supply of water for the use proposed, as determined by the Division of Water Resources.

The water source shall be capable of supplying a minimum of four hundred-fifty gallons for residential uses. For RV Parks and Campgrounds the water source shall be capable of supplying a minimum of fifty gallons per space per day for spaces lacking individual water connections and one hundred gallons per space per day for all spaces provided with individual water connections.

C. Minimum Lot Area

1. For all land not provided with central water facilities, the minimum lot area shall be one (1) acre;
2. For all land provided with central water facilities, the minimum lot area shall be 7,000 square feet for an interior lot and 9,000 square feet for a corner lot; the minimum lot area per dwelling unit shall be 7,000 square feet.
3. For all commercially zoned land provided with central water facilities, the minimum lot area shall be ten thousand (10,000) square feet.

D. **Connection.** The water supply system shall be connected by pipes to all homes, RV parks, buildings and other facilities requiring water.

E. **Equipment.** All water piping, fixtures and other equipment shall be located, constructed and maintained in accordance with state and County regulations and requirements.

F. **Contamination and Flood Damage.** Every well or suction line of the water supply system shall be located and constructed in such a manner that neither underground nor surface contamination will reach the water supply from any source.

Section 13.110 Centralized System

A. **General Requirements.** No new use shall be approved by Conejos County unless a reliable water supply system is available to it. Where a public supply of water of satisfactory

quantity, quality, dependability and pressure is available, the applicant shall make every reasonable documented effort to connect to such a system and it shall be the exclusive supply used.

When such a public water supply is not available, a central water supply system may be developed and used if it meets the standards of the Colorado Department of Public Health and Environment. It is the responsibility of the developer to obtain an engineered design of such a system and to submit proof that the system is installed as designed.

B. Future Demands. Centralized water treatment and distribution systems shall be designed to meet the initial and future demands of the proposed use. In addition, new centralized water systems shall be designed with sufficient treatment and storage capacity to serve the demands.

C. Application Requirements. The following information must be submitted in addition to the other information required for proposed use.

1. **Description of System.** A description of the proposed system for the supply of potable water will be provided which includes the location and size of water lines. Also there must be adequate evidence that the system will be capable of dependably delivering an adequate quantity of water for the proposed use.
2. **Water Availability.**
 - a. Where water supply is to be provided by a public system or an already existing private centralized system, a letter of preliminary commitment from the owner(s) of that system or their duly authorized agent(s), stating that there now exists or will exist sufficient system capacity to supply the needs of the proposed use and that the owners of the system are willing and able to provide the proposed water supply. The applicant must also submit a statement of the feasibility of extending service to the proposed site.
 - b. For a new centralized system, evidence of ownership or right of acquisition of or use of existing and/or proposed water rights and historic use and estimated yield of claimed water rights.
3. **Water Quality.** Evidence demonstrating that the potability and overall quality of the proposed supply will meet or exceed state and Federal water quality standards for drinking water.

Section 13.120 On-Lot Systems

A. General Requirements. Water service that is provided to every lot or parcel by a community or collective water supply and distribution system shall be favored where such systems are practical. All lots which cannot practically be provided with a community or centralized water treatment and distribution system shall be provided with an individual on-lot water supply system. The applicant shall install such a system or shall require by deed restriction or otherwise in a manner satisfactory to the Board of County Commissioners as a condition of sale that such an on-site water supply system shall be installed by the purchaser of the lot at the time of the construction of the principal building and before it is occupied.

On-lot systems shall meet these criteria:

1. **Underground aquifers** are adequate to supply the projected future needs of the development.
2. **Well permits** are available from the Colorado Division of Water Resources.
3. **Well usage** would not interfere with vested water rights.

B. Application Requirements. The following information must be submitted in addition to the other information required for proposed use.

1. **Description of System.** A description of the proposed systems for the supply of potable water along the location of the well(s) and water lines. Also there must be adequate evidence that the system will be capable of dependably delivering an adequate quality and quantity of water for the proposed use.
2. **Water Availability.** Evidence of ownership or right of acquisition of or use of existing and/or proposed water rights and historic use and estimated yield of claimed water rights shall be provided.
3. **Water Quality.** Evidence demonstrating that the potability and overall quality of the proposed supply will meet or exceed state and Federal water quality standards for drinking water.
4. **Cumulative Effect.** Where the water supply will be provided by multiple individual on-lot wells, the cumulative effect of such proposed use on vested water rights shall be discussed and evidence regarding the effect shall be provided.

DIVISION 13.2 WASTEWATER

Section 13.200 General Requirements

A. General. An adequate wastewater system shall be provided in each for each applicable proposed use for the purpose of conveying and disposing of all sewage. Such system shall be designed, constructed and maintained in accordance with state and local laws. No proposed use shall receive the approval of Conejos County unless the County Inspector/Code Enforcer, under the guidelines of the Colorado Department of Public Health and Environment, has made a favorable recommendation regarding the proposed method of sewage disposal.

B. Minimum Lot Area

1. For all land not provided with central sewer facilities, the minimum lot area shall be one (1) acre; the minimum lot area per dwelling unit shall be one (1) acre.
2. For all land provided with central sewer facilities, the minimum lot area shall be 7,000 square feet for an interior lot and 9,000 square feet for a corner lot; the minimum lot area per dwelling unit shall be 7,000 square feet.

3. For all commercial zoned land provided with central sewer facilities, the minimum lot area shall be ten thousand (10,000) square feet.

C. Sewer Lines. All sewer lines shall be constructed by standards and with materials that comply with state or local laws and shall meet the Colorado Department of Public Health and Environment design criteria.

D. Sewage Treatment and/or Discharge. Where the sewer lines are not connected to a public sewer, all proposed sewage disposal facilities shall be approved by the Colorado Department of Public Health and Environment prior to construction. Effluents from sewage treatment facilities shall not be discharged into any waters of the state, except with prior approval of the Colorado Department of Public Health and Environment.

E. Contamination and Flood Damage. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters and, on-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Section 13.210 Centralized System

A. General Requirements. No new use shall be approved by Conejos County unless a reliable wastewater supply system is available to it. Where a public sanitary sewer main or service area of a special sanitation district is available, the applicant shall make every reasonable documented effort to connect to such a system and it shall be the exclusive system used.

When such a public sanitation system is not available, a central wastewater system may be developed and used if it meets standards of the Colorado Department of Public Health and Environment. It is the responsibility of the developer to obtain an engineered design of such a system and to submit proof that the system is installed as designed.

B. Mobile Home Parks and RV Parks and Campgrounds. An adequate, centralized sewage system shall be required in each Mobile Home Park, RV Park and Campground for the purpose of conveying and disposing of all sewage. Such system shall be designed, constructed and maintained in accordance with state and local laws.

C. Application Requirements. When a centralized system is being proposed, the following information must be submitted in addition to the other information required in this Code for the proposed use.

1. **Description of System.** Description of the proposed wastewater system, including: soil percolation information; location and size of sewer service lines and leach field or treatment facilities to serve the proposed use; and the peak capacity of the sewage treatment system.
2. **Complies with State Regulations.** The applicant must provide evidence that the proposed system for the disposal of sewage will comply with the State of Colorado statutes, regulations and design requirements and that the proposed method is both technically feasible and environmentally sound.
3. **Availability of Existing System.** Where a wastewater system is to be provided by an already existing public or other centralized system, a letter of preliminary

commitment from the owner(s) of that system or their duly authorized agent(s), stating that there now exists or will exist sufficient system capacity to supply the needs of the proposed use and that the owners of the system are willing and able to provide the proposed sewage collection and treatment services.

Section 13.220 Individual Sewage Disposal Systems (ISDS).

A. General Requirements. Where it is not possible or practical to connect to an existing public or other centralized waste water system an on-lot system must be installed at the time of construction of the principle building and before it may be occupied. On site individual sewage disposal systems shall comply with this Code and with all applicable State of Colorado statutes and regulations governing the construction of such systems.

B. Distance from Streams. Individual septic tanks must be placed at least one hundred (100) feet from the high water mark of any perennial stream. Drain fields from on-site sewage disposal and treatment system (i.e., septic systems and leach fields) must be placed one hundred (100) feet from the high water mark of any stream.

C. Raised and Engineered Septic Systems. A raised or otherwise engineered septic system will be required in certain circumstances based on State standards as interpreted by the County Inspector/Code Enforcer.

D. Application Requirements. When an ISDS is proposed, the following information must be submitted in addition to the other information required for the proposed use.

1. **Description of System.** Description of the proposed wastewater system, including location and size of leach field, sewer lines, etc.
2. **Soil Percolation.** Soil percolation tests if applicable.

Section 13.230 Capped Sewers

A. General Requirements. Where County, municipal or special district plans indicate that the construction or extension of sewage collection lines may serve a proposed subdivision within a reasonable period of time, the Board of County Commissioners may require the installation of capped sanitary sewer mains and house connections in addition to the installation of temporary on-lot sewage disposal systems. It shall be the responsibility of the developer to obtain an engineered design for an adequate system and proof that they system is built as designed.

B. Application Requirements. When a capped sewer is proposed, the following information must be submitted in addition to the other information required for the proposed use.

1. **Description of System.** Description of the proposed wastewater system, including: soil percolation information; location and size of sewer service lines and leach field or treatment facilities to serve the proposed use; and the peak capacity of the sewage treatment system.
2. **Complies with State Regulations.** The applicant must provide evidence that the proposed system for the disposal of sewage will comply with the State of Colorado statutes, regulations and design requirements and that the proposed method is both technically feasible and environmentally sound.

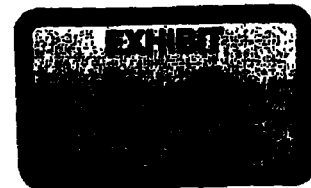


3. **Availability of Existing System.** Where a wastewater system is to be provided by an already existing public or other centralized system, a letter of preliminary commitment from the owner(s) of that system or their duly authorized agent(s), stating that there now exists or will exist sufficient system capacity to supply the needs of the proposed use and that the owners of the system are willing and able to provide the proposed sewage collection and treatment services.

DIVISION 13.3 PUBLIC UTILITIES

Section 13.300 General Requirements

- A. **Public Utilities.** Public utilities, where available, shall be used. If not available, alternative systems may be employed.
- B. **Underground Utilities.** The construction, installation and repair of right-of-way openings for subsurface utilities require approval from Conejos County, the posting of an appropriate bond and evidence of adequate insurance. Refer to Article 14.
- C. **Utility Easements.** Utility easements shall measure twelve (12) feet on each side of rear lot lines and on subdivision perimeter rear lot lines adjacent to unsubdivided property. Utility easements shall measure fifteen (15) feet in width. Side lot easements, where necessary, shall measure ten (10) feet in width on either side of the lot line. If the location of utility easements adjacent to rear lot lines is unsuitable for use by utility companies due to drainage, irrigation or other obstructions, an applicant shall provide like width easements adjacent to said areas of obstruction. Utility easements shall be subject to approval by the applicable utility companies and, where required, additional easements shall be required for main switching stations and substations. Applicants shall make the necessary arrangements with each serving utility for the installation of required utilities.
- D. **Flood Damage.** All proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

**+2005 CONEJOS COUNTY LAND USE CODE+****ARTICLE 1 TITLE, PURPOSE AUTHORITY AND INTERPRETATION****DIVISION 1.1 GENERAL****Section 1.100 Title and Short Title**

This code, and all future amendments, shall be known as the Conejos County Land Use Code.

Section 1.110 Purpose

A. **General Purposes.** The general purposes of this Land Use Code are to:

1. **Protect Quality of Life.** To provide for protection of the health, safety and welfare of the residents of the County and to protect and preserve the environment, the history and the traditions of Conejos County.
2. **Provide for Orderly Development of the County.** To provide for balanced, orderly growth patterns and to provide efficient, phased government services to accommodate existing and future residents.
3. **Preserve Property Values.** To preserve and promote the value of property, to protect the tax base of the County and to respect the property rights of citizens.
4. **Protect and Enhance Agriculture.** To protect and enhance agricultural and traditional practices and the rural characteristics of the County.
5. **Protect Water Resources.** To protect water resources in the County for the health, safety and welfare of the residents as well as for the long-term sustainability of the environment and the local economy.

Section 1.120 Authority and Jurisdiction

A. **Authority.** It is the intention of the Board of County Commissioners in adopting this Land Use Code to fully exercise all relevant powers conferred by the laws of the State of Colorado, including but not limited to:

1. **Colorado Constitution.** All of the powers reserved to the County by the Colorado Constitution.
2. **State Enabling Legislation.** All of the powers granted to the County by:
 - a. **Title 30, Article 28, C.R.S.** The provisions of the County Planning Act.
 - b. **Title 29, Article 20, C.R.S.** The provisions of the Local Government Land Use Control Enabling Act of 1974.